

**BECHTEL BWXT IDAHO, LLC**  
**GENERAL PROVISIONS FOR**  
**FIXED-PRICE CONSTRUCTION SUBCONTRACTS**

## INTRODUCTION:

The terms and conditions of these General Provisions (GP's) and those set forth in the Purchase Order or Subcontract (terms used interchangeably) apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Subcontractor, and Contractor objects to, and shall not be bound by, any such additional or different terms and conditions. Subcontractor must determine what provisions shall be inserted in its lower-tier subcontracts and purchase orders implementing the obligations of Subcontractor. By entering into this Subcontract, Subcontractor recognizes these obligations and agrees to implement them in its lower-tier subcontracts and supplier purchase orders.

To assist Subcontractor in determining what provisions to insert in its lower-tier subcontracts and purchase orders, articles in part or in full, required to be passed down to Subcontractor's lower-tiers, are indicated by **bold-face** print.

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1. GENERAL

1. The Subcontract, which term shall be deemed to include related plans, drawings, specifications and other applicable Subcontract documents, contains the entire agreement and understanding between the parties as to the subject matter of this Subcontract and merges and supersedes all prior agreements, understandings, commitments, representations, writings and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations will bind neither of the parties with respect to the subject matter of this Subcontract. The parties agree that recourse may not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Subcontract.
2. The failure of either party to enforce at any time any of the provisions of the Subcontract, or to require at any time performance by the other party of any of such provisions, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Subcontract or any parts thereof, or the right of either party thereafter to enforce each and every provision.
3. The headings used in the Subcontract are not to be construed as modifying, limiting or expanding, in any way, the scope or extent of the provisions of the Subcontract, unless otherwise indicated.
4. Subcontractor shall perform all work pursuant to the Subcontract as an independent contractor. If any part of the work is subcontracted, Subcontractor is responsible for having that subcontracted work comply with the terms of the Subcontract.
5. No act or order of Contractor shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of the Subcontract and no action taken by Contractor under the Subcontract, shall be construed to make or constitute Contractor as the employer or joint employer of any employee of Subcontractor or its lower-tier subcontractor(s).

2. DEFINITIONS

As used throughout the Subcontract, except in articles incorporated by reference and where otherwise indicated, the following terms shall apply:

1. The term "Government" shall mean the United States of America or any duly authorized representative thereof.
2. The term "Contractor" or "Construction Manager" shall mean BBWI or its duly authorized representative(s) and any successor Contractor.
3. The term "Prime Subcontractor" or "Subcontractor" shall be the General Contractor for all purposes under the Subcontract including the Miller Act.
4. The term "lower-tier subcontractor" shall mean any party entering into an agreement with Subcontractor or any other party who has entered into a contract with Subcontractor, for the furnishing of supplies or services required for performance of the Subcontract.
5. The term "Point-of-Contact (POC)" shall mean the individuals identified in the Subcontract as the duly authorized representative of Contractor for overseeing Subcontractor work activities.
6. The term "Contracting Officer" or "Subcontract Administrator (SA)" shall mean the duly authorized representative of Contractor who will administer the Subcontract as appointed by the Director of Procurement.
7. The term "Construction Coordinator (CC)" shall mean the duly authorized representative of Contractor who will provide technical direction to Subcontractor.
8. The term "Contractor Representative" shall mean the duly authorized representative designated by Contractor who performs and/or witnesses inspections, tests, and verifications.
9. The term "INEEL" shall mean the Idaho National Engineering and Environmental Laboratory located approximately 50 miles west of Idaho Falls, Idaho, exclusive of the Naval Reactors Facility and Argonne

National Laboratory.

10. The term "Main Guard Post" shall mean building B-27-603 at the INEEL main entrance.
11. The terms "substantial completion" or "beneficial occupancy" shall mean the date when construction is sufficiently complete in accordance with the Subcontract requirements that the end user can occupy or utilize the work, or a portion thereof, for its intended use. A fully executed "Partial Inspection and Project Transfer" form signifies substantial completion.
12. The term "final completion" shall mean the date when the work has been completed in its entirety in accordance with the Subcontract documents and is signified by a fully executed "Final Inspection and Project Transfer" form.
13. Reference to fiscal year to date shall correlate to DOE's fiscal year, which begins October 1 and ends September 30.
14. The term "weekend" shall mean Friday, Saturday and Sunday.
15. The designation "FAR" is an acronym for Federal Acquisition Regulation.
16. The designation "DEAR" is an acronym for DOE Acquisition Regulation.

### 3. FAR AND DEAR ARTICLES

FAR and DEAR clauses and articles which may contain performance requirements are incorporated herein by reference as if set forth in their entirety. All references herein to the FAR and DEAR are those in effect under Contractor's prime contract with DOE as of the date of the solicitation for the Subcontract, unless otherwise indicated. For such articles incorporated by reference, the following definitions apply:

- a. "DOE" means the Department of Energy.
- b. "Government" means Contractor.
- c. "Contractor" means Subcontractor.
- d. "Subcontractor" means Subcontractor's lower-tier subcontractor.
- e. "Contracting Officer" means Contractor's Procurement Agent.
- f. "Contract" means the Purchase Order or Subcontract.

### INCORPORATED ARTICLES

1. FAR 52.203-3 Gratuities
2. FAR 52.203-5 Covenant Against Contingent Fees (price greater than \$50K)
3. **FAR 52.203-6** **Restrictions on Subcontractor Sales to the Government**
4. **FAR 52.203-7** **Anti-Kickback Procedures**
5. **FAR 52.219-9** **Small Business Subcontracting Plan (large business, price greater than \$1M)**

6.	<b><u>FAR 52.222-4</u></b>	<b>Contract Work Hours and Safety Standards Act--Overtime Compensation</b>
7.	<b><u>FAR 52.222-6</u></b>	<b>Davis-Bacon Act (price greater than \$2K)</b>
8.	<b><u>FAR 52.222-7</u></b>	<b>Withholding of Funds</b>
9.	<b><u>FAR 52.222-8</u></b>	<b>Payrolls and Basic Records</b>
10.	<b><u>FAR 52.222-9</u></b>	<b>Apprentices and Trainees</b>
11.	<b><u>FAR 52.222-10</u></b>	<b>Compliance with Copeland Act Requirements</b>
12.	<b><u>FAR 52.222-11</u></b>	<b>Subcontracts (Labor Standards)</b>
13.	<b><u>FAR 52.222-12</u></b>	<b>Contract Termination--Debarment</b>
14.	<b><u>FAR 52.222-13</u></b>	<b>Compliance with Davis-Bacon and Related Act Regulations</b>
15.	<b><u>FAR 52.222-14</u></b>	<b>Dispute Concerning Labor Standards</b>
16.	<b><u>FAR 52.222-15</u></b>	<b>Certification of Eligibility</b>
17.	<b><u>FAR 52.222-21</u></b>	<b>Prohibition of Segregated Facilities (price greater than \$10K)</b>
18.	<b><u>FAR 52.222-26</u></b>	<b>Equal Opportunity</b>
19.	<b><u>FAR 52.222-27</u></b>	<b>Affirmative Action Compliance Requirements for Const. (price greater than \$10K)</b>
20.	<b><u>FAR 52.222-35</u></b>	<b>Affirmative Action Special Disabled and Vietnam Era Veterans (and follow requirements of FAR 22.13)</b>
21.	<b><u>FAR 52.222-36</u></b>	<b>Affirmative Action for Workers with Disabilities (and follow requirements of FAR 22.14)</b>
22.	<b><u>FAR 52.223-2</u></b>	<b>Clean Air and Water (price greater than \$100K, and follow requirements of FAR 22.3)</b>
23.	<b><u>FAR 52.224-1/</u> <b><u>52.224-2</u></b></b>	<b>Privacy Act (and follow requirements of FAR 24.1)</b>
24.	<b><u>FAR 52.225-11</u></b>	<b>Restrictions on Certain Foreign Purchases</b>
25.	<b><u>FAR 52.225-15</u></b>	<b>Buy American Act--Construction materials under Trade Agreements Act and North American Free Trade Agreement</b>
26.	<b><u>FAR 52.227-1</u></b>	<b>Authorization and Consent</b>
27.	<b><u>FAR 52.227-4</u></b>	<b>Patent Indemnity</b>
28.	<b><u>FAR 52.228-2</u></b>	<b>Additional Bond Security</b>
29.	<b><u>FAR 52.230-2</u></b>	<b>Cost Accounting Standards (large business, price greater than \$500K)</b>
30.	<b><u>FAR 52.230-6</u></b>	<b>Administration of Cost Accounting Standards (applies when FAR 52.230-2 applies)</b>
31.	<b><u>FAR 52.247-63</u></b>	<b>Preference for U.S. Flag Air Carriers</b>
32.	<b><u>FAR 52.248-3</u></b>	<b>Value Engineering - Construction</b>
33.	<b><u>DEAR 952.204-71</u></b>	<b>Sensitive Foreign Nations Controls</b>

34. **DEAR 952.209-72**      **Organizational Conflicts of Interest**
35. **DEAR 952.250-70**      Nuclear Hazards Indemnity (this clause applies in any subcontract which may involve the risk of public liability, as that term is defined in the Atomic Energy Act of 1964 as amended (Act) and as further described in DEAR-952.250-70. This clause however does not apply to subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for the activities under the subcontract. For purposes of this clause, "Government" shall mean Government or Contractor)
36. **DEAR 970.15406-2**      **Cost or Pricing Data** (price greater than \$500K, upon request)
37. **DEAR 970.5204-9**      **Accounts, Records and Inspection** (applies only to cost-reimbursement subcontracts)
38. **DEAR 970.5204-19**      Printing
39. **DEAR 970.5204-52**      Foreign Travel

#### **4. WHISTLEBLOWER PROTECTION FOR EMPLOYEES**

1. Subcontractor shall comply with the requirements of the "DOE Contractor Employee Protection Program at 10 CFR 708."
2. Subcontractor shall insert or have inserted the substance of this Article including this paragraph in lower-tier subcontracts at all tiers, with respect to work performed on site at a DOE-owned or-leased facility, as provided for at 10 CFR 708.

#### **5. ABILITY TO WORK**

1. Every Subcontractor and lower-tier subcontractor employee shall notify its immediate supervisor of:
  - a. Work restrictions imposed resulting from any medical/physical condition; or
  - b. Medication being taken which may impact the safety of themselves, their coworkers or the public.Subcontractor shall ensure proper work accommodation or referral to appropriate medical care facilities.
2. Subcontractor shall, in addition, refer employees to the appropriate medical providers for health evaluation when:
  - a. Subcontractor identifies behavior or a condition it, in good faith, believes to be health related which could impact safety; or
  - b. An employee requests a medical evaluation due to potential impact on work assignments and/or safety and health.
3. Any Subcontractor or lower-tier subcontractor employee who identifies behavior or conditions creating an imminent hazard to health and safety shall take whatever steps are reasonably necessary to correct the condition, including stopping the work.
4. Confidentiality of medical information (related to the evaluation) shall be preserved; only work restrictions imposed shall be reported to Subcontractor. Subcontractors shall not request diagnostic medical information.
5. Subcontractor shall have in effect a Company policy, which prohibits retaliation or retribution resulting from compliance with this Article.

6. Subcontractor shall insert or have inserted this Article, including this paragraph, in lower-tier subcontracts at all tiers, with respect to work performed on site or at a Contractor-owned or-leased facility.

## 6. PUBLIC RELEASE OF INFORMATION

Information, data, photographs, sketches and advertising, relating to the work under the Subcontract, which Subcontractor desires to release or publish, shall be submitted to Contractor for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier or supplier, must have the prior approval of Contractor. Subcontractor shall include all provisions of this clause including this sentence in all lower-tier subcontracts under the Subcontract.

## 7. RIGHTS IN DATA

### 1. Definitions

- a. Computer data bases, as used in this Article, means a collection of data in a form capable of, and for the purpose of, being stored in, process, and operated on by a computer. The term does not include computer software.
- b. Computer Software, as used in this Article, means:
  - (i) computer programs which are data comprising a series of instructions, rules routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and
  - (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- c. Data, as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this Article, the term does not include data incidental to the administration of this Subcontract, such as financial, administrative, cost and pricing, or management information.
- d. Form, fit, and function data, as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- e. Limited rights data, as used in this Article, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice, if included in this Article.
- f. Restricted computer software, as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice, if included in this Article.
- g. Technical data, as used in this Article, means recorded data, regardless of form or characteristic,

that are of a scientific or technical nature. Technical data does not include computer software, but does not include manuals and instructional materials and technical data formatted as a computer data base.

- h. Unlimited rights, as used in this Article, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

2. Allocation of rights

- a. Except as provided in Paragraph 3 of this Article regarding copyright, the Government shall have unlimited rights in:
  - (i) Data first produced in the performance of this Subcontract;
  - (ii) Form, fit, and function data delivered under this Subcontract;
  - (iii) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Subcontract; and
  - (iv) All other data delivered under this Subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with Paragraph 7 of this Article.
- b. Subcontractor shall have the right to:
  - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by Subcontractor in the performance of this Subcontract, unless provided otherwise in Paragraph 4 of this Article;
  - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in Paragraph 7 of this Article;
  - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with Paragraphs 5 and 6 of this Article; and
  - (iv) Establish claim to copyright subsisting in data first produced in the performance of this Subcontract to the extent provided in subparagraph 3.a of this Article.

3. Copyright

- a. Data first produced in the performance of this Subcontract. Unless provided otherwise in Paragraph 4 of this Article, Subcontractor may establish, without prior approval of Contractor or Department of Energy (DOE), claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Subcontract and published in academic, technical or professional journals, symposia proceedings or similar works.

The prior, express written permission of the DOE Contracting Officer, through Contractor, is required to establish claim to copyright subsisting in all other data first produced in the performance of this Subcontract. When claim to copyright is made, Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including Subcontract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide

license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, Subcontractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

- b. Data not first produced in the performance of this Subcontract. Subcontractor shall not, without prior written permission of the DOE Contracting Officer, through Contractor, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph 3.a of this Article; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in Paragraph 7 of this Article or as otherwise may be provided in a collateral agreement incorporated in or made part of this Subcontract.
- c. Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this Paragraph 3, and to include such notices on all reproductions of the data.

4. Release, publication and use of data

- a. Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by Subcontractor in the performance of this Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph 4 of this Article or expressly set forth in this Subcontract.
- b. Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Subcontract which contain restrictive markings, Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the DOE Contracting Officer, through Contractor.
- c. Subcontractor agrees not to assert copyright in computer software first produced in the performance of this Subcontract without prior written permission of the DOE Patent Counsel assisting the subcontracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions and submission requirements to assure utilization, dissemination, and commercialization of the data. Subcontractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

5. Unauthorized marking of data

- a. Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with restrictive or limiting markings not authorized by this Subcontract, Contractor with DOE approval may at any time either return the data to Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:
  - (i) Contractor, in coordination with DOE, shall make written inquiry to Subcontractor affording Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
  - (ii) If Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by Contractor, in coordination with DOE, for a good cause shown), the Government, and Contractor, shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any

disclosure prohibitions;

- (iii) If Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subparagraph 5.a. (i) of this Article, Contractor, in coordination with DOE, shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the DOE Contracting Officer determines that the markings are authorized, Subcontractor shall be notified in writing. If Contractor determines, with concurrence of the DOE Contracting Officer, that the markings are not authorized, Contractor shall furnish Subcontractor a written determination, which determination shall become the final decision regarding the appropriateness of the markings unless Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of Contractor's decision. Contractor and DOE shall continue to abide by the markings under this subparagraph 5.a. (iii) until final resolution of the matter either by Contractor's determination becoming final (in which instance the Government and Contractor shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- b. The time limits in the procedures set forth in subparagraph 5.a. of this Article may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- c. This Paragraph 5 does not apply if this Subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title In of the Federal Property and Administrative Services Act of 1949.
- d. Except to the extent Contractor's action occurs as the result of the final disposition of the matter by a court competent jurisdiction, Subcontractor is not precluded by this Paragraph from bringing a claim pursuant to the Disputes Article of this Subcontract, as applicable, that may arise as the result of Contractor removing or ignoring authorized markings on data delivered under this Subcontract.

6. Omitted or incorrect marking

- a. Data delivered to Contractor without either the limited rights or restricted rights notice as authorized by Paragraph 7 of this Article, or the copyright notice required by Paragraph 3 of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and Contractor assume no liability for the disclosure, use, or reproduction of such data.

However, to the extent the data has not been disclosed without restriction outside the Government, Subcontractor may request, within 6 months (or a longer time approved by Contractor for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at Subcontractor's expense, and Contractor, in coordination with DOE, may agree to do so if Subcontractor:

- (i) Identifies the data to which the omitted notice is to be applied;
  - (ii) Demonstrates that the omission of the notice was inadvertent;
  - (iii) Establishes that the use of the proposed notice is authorized; and
  - (iv) Acknowledges that the Government and Contractor have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- b. Contractor, in coordination with DOE, may also:
  - (i) Permit correction at Subcontractor's expense of incorrect notices if Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct

notice is authorized, or

- (ii) Correct any incorrect notices.

7. **Protection of limited rights data and restricted computer software**

When data other than that listed in subparagraphs 2.a. (i), (ii) and (iii) of this Article are specified to be delivered under this Subcontract and qualify as either limited rights data or restricted computer software, if Subcontractor desires to continue protection of such data, Subcontractor shall withhold such data and not furnish them to Contractor under this Subcontract. As a condition to this withholding, Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to Contractor are to be treated as limited rights data and not restricted computer software.

8. **Subcontracting**

Subcontractor has the responsibility to obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill Subcontractor's obligations under this Subcontract. If a lower-tier subcontractor refuses to accept terms affording the Government and Contractor such rights, Subcontractor shall promptly bring such refusal to the attention of Contractor and not proceed with the lower-tier subcontract award without written authorization by Contractor.

9. **Relationship to patents**

Nothing contained in this Article shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

10. **Inspection**

Subcontractor agrees, except as may be otherwise specified in this Subcontract for specific data items listed as not subject to this paragraph, that the DOE Contracting Officer or an authorized representative may, up to 3 years after acceptance of all items to be delivered under this Subcontract, inspect at Subcontractor's facility any data withheld pursuant to Paragraph 7 of this Article for purposes of verifying Subcontractor assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance.

Where Subcontractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE Contracting Officer shall designate an alternate inspector.

8. **FEDERAL, STATE AND LOCAL TAXES**

1. **Definitions**

- a. "Subcontract date", as used in this Article, means the effective date of the Subcontract.
- a. "All applicable Federal, State and Local taxes and duties", as used in this Article, means all taxes and duties, in effect on the Subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by the Subcontract.
- b. "After-imposed Federal Tax", as used in this Article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Subcontract date but whose exemption was later revoked or reduced during the Subcontract period, on the transactions or property covered by the Subcontract that Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Subcontract date. It does not include social security tax or other employment taxes.

**"After-relieved Federal Tax", as used in this Article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by the Subcontract, but which Subcontractor is not required to pay or bear, or for which Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Subcontract date.**

- 2. The Subcontract price shall include all applicable Federal, State and Local taxes and duties. Payment of the sales taxes shall be the responsibility of Subcontractor.**
- 3. The Subcontract price shall be increased by the amount of any after-imposed Federal tax, provided Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Subcontract price, as a contingency reserve or otherwise.**
- 4. The Subcontract price shall be decreased by the amount of any tax or duty, except social security or other employment taxes, that was included in the Subcontract price and that Subcontractor is required to pay or bear, or for which no refund or other relief is obtained, through Subcontractor's fault, negligence, or failure to follow instructions of Contractor.**
- 5. No adjustment shall be made in the Subcontract price under this Article unless the amount of the adjustment exceeds \$500.**
- 6. Subcontractor shall promptly notify the SA of all tax matters which may reasonably be expected to result in either an increase or decrease in the Subcontract price and shall take action with respect thereto as directed by the SA.**

## **9. PERMITS OR LICENSES**

**Except as otherwise directed by Contractor, Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision in which the work under the Subcontract is performed.**

## **10. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION**

- 1. Subcontractor shall carefully study and compare the Subcontract documents with each other and investigate the physical field conditions with information furnished by Contractor and shall at once report to Contractor, errors, inconsistencies, or omissions not previously discovered during bidding. Subcontractor shall clearly define the discrepancy or problem and provide a recommended solution.**

Subcontractor shall not be liable to Contractor for damage resulting from errors, inconsistencies, or omissions in the Subcontract documents, unless Subcontractor recognized, or with the exercise of reasonable care should have recognized such error, inconsistency or omission and failed to report it to Contractor. If Subcontractor performs any work which it knows, or with the exercise of reasonable care should have known, involved an error, inconsistency or omission in the Subcontract documents, without such notice to Contractor, Subcontractor shall be liable to correct the work.

- 2. "Shop drawings" means drawings submitted to Contractor by Subcontractor or lower-tier subcontractor at any tier, pursuant to the Subcontract, which show in detail: (1) the proposed fabrication and assembly of structural elements; and (2) the installation (i.e., form, fit and attachment details) of materials or equipment. The submittal includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by Subcontractor to explain, in detail, specific portions of the work required by the Subcontract. Contractor may duplicate, use and disclose in any manner and for any purpose shop drawings delivered under the Subcontract.**
- 3. If the Subcontract requires shop drawings, Subcontractor shall coordinate all such drawings and review them for accuracy, completeness and compliance with Subcontract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Contractor without evidence of Subcontractor's approval may be returned for resubmission. Disposition of drawings by Contractor shall not**

relieve Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Subcontract.

Subcontractor shall not be entitled to allowable schedule delays, resulting from Contractor returned shop drawings for resubmission, due to Subcontractor's failure to comply with Subcontract requirements.

4. If shop drawings show variations from the Subcontract requirements, Subcontractor shall describe and justify such variations in writing, separate from the drawings, at the time of submission.
5. Anything identified in the Statement of Work (SOW)/Specifications and not shown on Contractor's drawings, or shown and not identified in the SOW/Specifications, shall be of like effect as if shown or identified in both.

#### 11. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

Subcontractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to: (1) conditions bearing upon transportation, disposal, handling and storage of materials; (2) the availability of labor, water, electric power and roads; (3) uncertainties of weather, river stages, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance.

Subcontractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Contractor as well as from the drawings and specifications made a part of the Subcontract. Any failure of Subcontractor to take the actions described and acknowledged in this paragraph shall not relieve Subcontractor from responsibility for properly estimating the difficulty and cost of successfully performing the work, or for proceeding to perform the work without additional expense to Contractor.

#### 12. COOPERATION WITH OTHERS

1. Contractor may undertake or award other subcontracts at or near the site of the work under the Subcontract. Subcontractor shall fully cooperate with the other subcontractors and with Contractor employees and shall carefully adapt scheduling and performing the work under the Subcontract to accommodate the work by others, heeding any direction that may be provided by Contractor. Subcontractor shall not commit or permit any act that shall interfere with the performance of work by any other subcontractor or Contractor employees.
2. Concurrent Work and Interface Responsibilities
  - a. When portions of the construction work under the Subcontract are performed near active operating areas, Subcontractor shall plan its construction work so as not to interfere with the operation of these facilities and shall maintain free and clear access to same for routine operational and maintenance activities performed by Contractor.
  - b. In addition, Subcontractor shall carefully coordinate all construction activities with Contractor so as to avoid conflicts and unnecessary delays in construction. Except for authorized shutdowns for the tie-in of newly constructed facilities, construction activities shall not disrupt normal operation of existing plant facilities.

#### 13. LAYOUT OF WORK

1. Subcontractor shall lay out its work from Contractor-established baselines and benchmarks indicated on the drawings and shall be responsible for all measurements in connection with the layout. Subcontractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to lay out the work.

Subcontractor shall be responsible for executing the work to the lines and grades established or indicated by the

Subcontract documents. Subcontractor shall maintain and preserve all stakes and other marks established by Contractor until authorized to remove them. If such marks are destroyed by Subcontractor through its negligence before their removal is authorized, Contractor may replace them and deduct the expense of the replacement from any amounts due or to become due to Subcontractor.

2. Initial survey reference points located within 100 yards of the construction site shall be furnished by Contractor.
3. Subcontractor shall furnish all other detail surveys, including all lines, grades and appropriate surveys of any other type unless otherwise specified.

#### **14. SUBCONTRACTOR'S RESPONSIBILITY**

1. As to the work to be done or performed by Subcontractor on premises owned or controlled by Contractor or the Government or the premises of other Contractor subcontractors, Subcontractor shall indemnify and hold harmless the Government and Contractor, their officers, agents and employees, from and against any claim, cause of action, cost, damages, expense (including attorney fees) and liability whatsoever (hereinafter, "claim"), including any costs or expenses incurred in enforcing this indemnity, arising in any manner from injury to or death of any person or from damage to or destruction of any property attributable to the conduct of Subcontractor or its lower-tier subcontractors, agents, or employees under the Subcontract. The indemnification shall extend to, but is not limited to, any such claim maintained in tort against the Government or Contractor for negligence or otherwise concerning any injury or death of an employee of Subcontractor which was or could have been the basis for a statutory worker's compensation claim; Subcontractor waives the exclusive remedy clause and the indemnity limitation under Idaho Workers' Compensation Law, Idaho Code 72-209(1) and (2). Nothing in the foregoing shall be construed to require Subcontractor to indemnify and save harmless the Government or Contractor from any liability arising out of or resulting from a nuclear incident or solely as a result of negligence of the Government and Contractor or either of them.

#### **2. Insurance**

- a. Subcontractor shall procure or cause to be procured at its own expense and shall likewise maintain or cause to be maintained, while any work is being performed and for such period hereafter as may be necessary under the circumstances, insurance sufficient to protect Subcontractor, Contractor, Contractor's subcontractors and the Government against all liability with respect to bodily injury or death, or property loss or damage which may be imposed by law upon Subcontractor or which is assumed by Subcontractor under the Subcontract. Subcontractor shall not be relieved of liability assumed pursuant to this Article by reason of the procurement, maintenance, limits, or coverage of any insurance policies whether or not approved by Contractor.
- b. Subcontractor shall insert the substance of this Article (Paragraphs 1 through 4 only) in lower-tier subcontracts under the Subcontract that requires work on a Government installation and shall require lower-tier subcontractors to provide and maintain the insurance required in the schedule or elsewhere in the Subcontract. Subcontractor shall maintain a copy of all lower-tier subcontractors' proofs of required insurance and shall make copies available to the SA upon request.
- c. Subcontractor shall maintain insurance at least in the following types and minimum amounts:

TYPE OF COVERAGE	POLICY LIMITS
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<b>Workers' Compensation and Employer's Liability.</b>	<b>\$500,000. Subcontractor to comply with applicable Federal and State Workers' compensation and occupational disease statutes.</b>
<b>Commercial General Liability, including independent Contractors, products and complete operations, broad form, property damage, personal injury and explosion collapse, underground "XCU" hazard exclusions deleted.</b>	<b>\$1,000,000 bodily injury per occurrence; \$500,000 property damage per occurrence; or \$1,000,000 combined single limit.</b>
<b>Business Automobile Liability including coverage for all owned, hired and non-owned vehicles.</b>	<b>\$500,000 per person; \$1,000,000 per occurrence bodily injury; \$500,000 per occurrence property damage; or \$1,000,000 combined single limit.</b>
<b>Builders' Risk (including the perils of earthquake and flood) for physical loss or damage to work performed under the materials and equipment on and off site and in transit if intended to become a part of the work. Acceptable coverage includes builder's risk or risk installation floater.</b>	<b>Amount of Subcontract, but not to exceed \$1,000,000. Where the amount of this Subcontract does not exceed \$50,000, builders risk insurance will not be required.</b>
<b>*Professional Liability where exposure exists, professional liability insurance extending for at least 12 months after services have been completed.</b>	<b>\$1,000,000 per occurrence. *Required for A/E if design or engineering is required under the Subcontract.</b>

- d. Policies issued for subcontractors shall be endorsed to include the following benefits for Contractor:
- (i) A 30 calendar day advance, written notice in the event of cancellation, non-renewal or material change of any policy.
  - (ii) Contractor and DOE-ID named as Additional Insured (except for Workers' Compensation and Professional Liability).
  - (iii) A Waiver of Subrogation in favor of Contractor (Builders' Risk Coverage only).
  - (iv) A Cross Liability or Severability of Interest clause (liability policies only).
  - (v) That Subcontractor's insurance is primary and that any insurance maintained by Contractor is considered excess and non-contributory.
- e. If more than one insurance company is involved, separate certificates must be provided by each such company. Certificates will not be acceptable unless all the listed coverages are provided in at least the amounts specified herein, with required endorsements. Certificates must be signed by an authorized representative of the insurance company whom shall indicate the capacity in which it is signing.
- f. When asbestos is included in the scope of work, Subcontractor shall furnish separate commercial general liability insurance coverage and submit the certificate with the Certificate of Insurance.
- g. Subcontractor, however, does not assume liability for the sole negligence of Contractor.
3. Subcontractor agrees to comply (and require its lower-tier Subcontractors to comply) with all applicable laws, rules and regulations with respect to state industrial insurance or Workers/Workmen's

Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal income taxes and further agrees to indemnify Contractor and the Government against and to save and hold harmless Contractor and the Government from, any and all liability and expense with respect to claims against Contractor or the Government which may result from the failure or alleged failure of Subcontractor or of any of its lower-tier subcontractors to comply therewith.

4. Subcontractor and its lower-tier subcontractors shall comply with all applicable orders, rules and/or regulations of Contractor, Contractor's subcontractors and the Government while at such facility or on such property.

15. **LIMITATIONS ON SUBCONTRACTING AND PERFORMANCE OF WORK BY SUBCONTRACTOR**

1. Subcontractor, when the work is a general construction project, shall perform at least 15 percent of the cost of the direct Davis-Bacon labor required to complete the Subcontract, not including the cost of material and supervision, with its own employees. When a construction project is awarded to a special trade subcontractor, Subcontractor shall perform at least 25 percent of the cost to complete the Subcontract, not including the cost of materials and supervision, with its own employees.
2. Subcontractor shall perform on the site, and with its own organization (excluding supervision), work equivalent to at least 12 percent of the total amount of work to be performed under the Subcontract. This percentage may be reduced by a Modification of the Subcontract if, during the performance of the work, Subcontractor requests a reduction and the Subcontract Administrator determines that the reduction would be to the advantage of Contractor.

16. **LABOR STANDARDS**

1. Whenever an actual or potential labor dispute is delaying or threatening the performance of the work, Subcontractor shall immediately notify the SA in writing. Such notice shall include all relevant information concerning the dispute and its background.

2. **INEEL Stabilization and Jurisdictional Agreements**

- a. The table below identifies the requirements for location of construction activity, unless stated differently in the Special Conditions.

Location:	On Site	Off Site (Bonneville County Only)
Site Stabilization Agreement (SSA)	X	
SSA Appendix "A" Wage Rates	X	
Davis-Bacon Act	X	X

<b>Davis-Bacon General Decision Wage Determination (latest revision)</b>	<b>X</b>	<b>X</b>
<b>Jurisdictional Agreement</b>	<b>X</b>	<b>X</b>

- b. The wage rates set forth in Appendix "A" of the Subcontract are the minimum rates which must be paid to the classifications of laborers and mechanics designated therein pursuant to the Davis-Bacon Act. Contractor does not represent that said minimum wage rates do now, nor shall they at any time in the future, prevail in the locality of the work for such laborers or mechanics; nor that such mechanics or laborers are, or shall be, obtainable at said rates for work under the Subcontract; nor that said rates represent the most recent wage determination by the Secretary of Labor with respect to such classifications of laborers or mechanics in the locality of the work.

## 17. SUBCONTRACTOR STAFF

1. Subcontractor shall designate a Project Manager (PM). The PM shall be fully authorized to act on behalf of Subcontractor in all legally binding matters pertaining to the construction of this project, including the authorization to negotiate settlements for all Change Orders issued by Contractor.

### 2. Superintendence

At all times during performance of the Subcontract and until the work is completed and accepted, Subcontractor shall directly superintend the work, or assign and have on the work a competent superintendent who is satisfactory to Contractor and has authority to act for Subcontractor.

The superintendent of Subcontractor shall follow the overall construction work (i.e., all lower-tiers, crews and suppliers), resolve construction problems and expedite the work on behalf of Subcontractor as necessary. If, for any reason, the superintendent is temporarily unavailable at the particular jobsite, an appropriate alternate shall be designated and authorized in writing by Subcontractor management to act on behalf of Subcontractor.

- a. Proposed changes in superintendent shall be submitted to Contractor for acceptance at least 1 work day prior to the planned date of change.
- b. **Each lower-tier subcontractor named on the project shall identify a designated foreman for its specialty areas. However, acceptance by Contractor is not required. This information shall be submitted concurrent with Subcontractor's Key Personnel and Line of Authority form.**
- c. The superintendent or the designated alternate shall be available at the jobsite while work is being performed and be responsible, but not limited, to:
- (i) Prepare and process all logs, reports, Vendor Data Submittals and Safe Work Permits (SWP's) in a timely manner. All applicable sections of the SWP's shall be completed including the superintendent's name, telephone and radio or pager number. The SWP's shall be placed in the drop box location designated by the POC for each facility.  
  
Obtaining the signatures required for non-timely SWP's shall be the responsibility of Subcontractor.
  - (ii) Develop and maintain a work progress monitoring system using the construction and vendor data schedule as the base documents.
  - (iii) Attend all required meetings, coordinate with Contractor support personnel and inform Contractor in a timely manner of any construction difficulties encountered.

- (iv) Plan, schedule, coordinate and supervise the day-to-day construction activities of Subcontractor and all lower-tiers. Assume responsibility for segregation, handling and packaging of all waste (i.e., radioactive, hazardous, mixed and general) and provide the required certifications to Contractor.
  - (v) When radiography is a part of the work scope and performed on a shift other than when the designated Superintendent is in attendance, there shall be a Contractor-approved, designated Superintendent at the jobsite, other than the radiographer, radiographer assistant(s), or boundary monitor.
- 3. Subcontractor shall complete and submit a Daily Construction Log in the format given on the Daily Construction Log. This form may be obtained from Contractor, or Subcontractor may substitute its own form, provided the format provides the same information as Contractor-furnished log. Subcontractor shall submit the completed log to Contractor POC or designee no later than 2 work hours after the start of the next work shift.
- 4. Safety Staff  

Subcontractor superintendent shall be designated Subcontractor's safety representative, unless otherwise identified on Subcontractor Key Personnel and Line of Authority form. Changes to the safety staff shall be submitted in writing to the POC by Subcontractor, 2 work days prior to the change date. Subcontractor's safety representative and designated alternate(s) shall meet the following requirements:

  - a. Successful completion of the "Supervisors Development Program" course by the National Safety Council, or equivalent experience.
  - b. Successful completion of the "30-hour Construction Outreach" course by OSHA.
  - c. Must have direct access to senior management with full authority to make safety-related changes and resolve safety issues by whatever means, up to and including issuing a stop work order, especially in imminent danger situations.
  - d. Shall be on site during any work being performed under this Subcontract. An alternate representative meeting the requirements of this Paragraph 4 may be appointed to cover the work in the event of an absence.
- 5. At any time during performance of the Subcontract, if any member of the accepted Subcontractor staff is found by Contractor to be incompetent, careless, a security risk, or otherwise objectionable, Subcontractor, upon written notice from Contractor, shall remove such individual from the project for a period of time determined by Contractor. This individual's suspension may be extended to any other Contractor subcontracts.
- 6. Lower-tier Subcontractor(s)
  - a. Subcontractor shall submit for evaluation by Contractor all proposed changes to the list of lower-tier subcontractors which was included in its proposal. Lower-tier subcontractors performing work on site must be listed on Contractor evaluated suppliers list for construction. Contractor reserves the right to reject any proposed lower-tier subcontractor that cannot demonstrate that it has the necessary equipment, organization and expertise to perform the required work. If requested, a proposed lower-tier subcontractor shall furnish references and a list of similar work which it has satisfactorily completed.
  - b. Subcontractor is fully responsible to Contractor for the acts and omissions of its lower-tier

subcontractors and of all persons either directly or indirectly employed by them just as Subcontractor is responsible for the acts and omissions of persons directly or indirectly employed by it under the Subcontract.

- c. Subcontractor shall examine all lower-tier submittals, such as Construction Interface Document (CID) proposals, vendor data submittals or claims, for accuracy and validity prior to submission to Contractor.
- d. Nothing contained in the Subcontract shall be construed as creating a contractual relationship between any lower-tier subcontractor and Contractor, nor as relieving Subcontractor of its obligations to Contractor under the Subcontract.

18. MEETINGS REQUIRED TO ATTEND:

- 1. The Subcontract Administrator shall conduct the Pre-Construction Meeting. After award of the Subcontract, a pre-construction meeting shall be scheduled at a location and time to be agreed upon between Contractor and Subcontractor. At a minimum, Subcontractor's representatives shall include Subcontractor's superintendent, the jobsite safety representative and the principal lower-tier subcontractor's foremen. Each representative shall have authority to make commitments and act for the firm. The purpose of the pre-construction meeting is to discuss Subcontractor's ES&H program in detail, any specific concerns or potential problems that Subcontractor is aware of, to provide general information appropriate to the Subcontract, to identify responsible individuals for the various functions within each organization and to develop tentative dates for the start of construction.
- 2. Contractor's Subcontract Administrator shall conduct Construction Status Meetings. Construction status meetings will be scheduled every two weeks or as considered necessary by Contractor. Subcontractor shall make arrangements to have representatives of its company and its principal lower-tier subcontractors present at all status meetings. Representatives shall have the authority to make commitments and act for their firms. Subcontractor shall assume full responsibility to act for and commit any lower-tier subcontractor employed by Subcontractor whether or not the lower-tier subcontractor is represented at the meeting.

Subcontractor's representative at these meetings shall be prepared to discuss job safety, quality assurance, schedule, vendor data, construction activities and other topics necessary to ensure project success. Immediately following the status meeting, a meeting is to be convened for the purpose of discussing and negotiating CIDs. It is expected that CIDs issued since the last meeting will be discussed with the intent of assuring a clear understanding of the scope, i.e., a meeting of the minds between Contractor and Subcontractor. Negotiations with regard to the price of the CID are to be scheduled for and conducted at the next meeting. Team members are expected to participate as necessary to ensure timely understanding and negotiation of CIDs.

3. Pre-work Planning Meetings

- a. After the Notice to Proceed is issued, but prior to the start of the work, Subcontractor with necessary lower-tier subcontractor personnel, must demonstrate to Contractor's satisfaction, knowledge and understanding of the Subcontract requirements, at a pre-work planning meeting(s). The meeting(s) will be conducted by Subcontractor prior to the start of each type of work, e.g., soil, concrete, steel, mechanical, or electrical, and prior to the start of performance by each lower-tier subcontractor.
- b. At the meeting(s), Subcontractor's and lower-tier subcontractors' personnel responsible for supervising the work must demonstrate their knowledge and understanding of the Subcontract requirements, with specific attention given to the integration of safety, environmental, health and quality assurance requirements into the work. Subcontractor must demonstrate complete knowledge and understanding of the safety requirements, work hazards and hazard mitigation, training requirements and all work control documents. Knowledge and understanding of the contents of applicable documents, e.g., the Subcontract Specifications, Drawings, Special Conditions, General Provisions, Subcontractor Requirements Manual and documents and forms referenced in the foregoing, must be demonstrated. At the meeting(s), Subcontractor must obtain

Contractor's resolution of any unanswered questions or conflicts with respect to requirements or performance of work.

- c. After Subcontractor satisfies Contractor regarding the readiness of Subcontractor and its lower-tiers, Contractor will issue a written authorization to Subcontractor, releasing it to perform each task. Multiple tasks may be released at one time, but each shall be specifically identified in writing as being released, prior to the start of performance.
- d. If Subcontractor fails to demonstrate sufficient knowledge and understanding of the Subcontract requirements at the pre-planning meetings, Contractor will not release the work and work shall not start. Pre-work planning meetings will continue to be held until Subcontractor demonstrates sufficient knowledge and understanding of the requirements. Continued (beyond 2 meetings for the same work) failure of Subcontractor to demonstrate sufficient knowledge and understanding of the requirements is a basis for Contractor to terminate the Subcontract for default under the Default Article of the General Provisions. Upon demand from Contractor, Subcontractor shall reimburse Contractor for costs incurred by Contractor due to attendance at unproductive meetings. Subcontractor's failure to obtain timely release of each task shall not be a basis for an extension of the performance period nor a claim for delay.
- e. Subcontractor shall provide Contractor's POC advance notice, at least one working day prior, of a pre-work planning meeting and shall schedule the meeting(s) sufficiently in advance to avoid impacting performance of the work. The meetings shall be held at Contractor's facilities, unless otherwise mutually agreed. If a meeting(s) is held at a place other than Contractor's facilities, Subcontractor is responsible for the cost of the meeting place.
- f. Nothing in the foregoing shall transfer liability, nor be construed to transfer responsibility, from Subcontractor to Contractor, nor in any way relieves Subcontractor from its responsibility for compliance with all Subcontract requirements.

4. Safety Meetings Subcontractor is Required to Attend or Conduct

- a. Subcontractor shall conduct a Plan of the Day (POD) every morning at the job site. The POD meeting will be conducted by the superintendent with the crew to discuss the day's activities, identify and analyze hazards, discuss necessary abatement action or personal protective equipment (PPE) required, review any facility requirements (outages, permits or work authorization documents), assure all pertinent vendor data is accepted prior to specific activities commencing as defined in the Vendor Data Schedule and answer any employee questions or concerns.

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The content of this meeting shall be documented with employee signatures attesting the information has been reviewed with them and they understand it.
- b. Subcontractor's superintendent shall hold a weekly Tool Box Safety Meeting for all its construction personnel, including lower-tier subcontractors, to emphasize project-specific ES&H concerns. This meeting shall last a minimum of 15 minutes. Contractor may provide Subcontractor with information to be used at the weekly meetings. Subjects that may be included, among others, are: standards and regulations, causes of accidents and methods of prevention, attitudes, motivations, hazards recognition and company rules and policies.
- c. Subcontractor safety representative shall meet weekly with Contractor ES&H personnel to discuss area safety and the Tool Box topic for the next week. This meeting should last no longer than 1 hour.
- d. **Contractor Construction Management will conduct a monthly Subcontractors Safety Meeting. This meeting will last approximately 2 hours. This meeting will be held the first Wednesday of each month at 1:00 p.m. in the CFA Cafeteria Conference Room. Written notification will be provided if the meeting time changes.**

**Attendance by Subcontractor's designated safety representative, site superintendent and principal lower-tier subcontractors is mandatory. Changes to rules and regulations due to Contractor, DOE, State or Federal requirements or national consensus standards will be announced in this meeting with official copies to follow in normal distribution.**

19. TOURS/VISITATIONS; TRANSPORTATION; HOUSING

1. Contractor and/or DOE specifically reserve the right to conduct, from time to time, tours of and visitations to, the work areas. Such tours and visitations may be conducted whether or not work is in progress at the premises and may involve the presence of varying numbers of persons, but shall be conducted in such a manner as not to interfere unreasonably with the performance of the work under the Subcontract. It shall be Subcontractors responsibility to ensure all personnel entering the "construction work area" are wearing the required PPE and have received all applicable training required for entry.
2. The INEEL bus system shall not be available for use by Subcontractor or its lower-tier subcontractor personnel under the Subcontract. Subcontractor and its lower-tier subcontractors must provide their own transportation for all work associated with the Subcontract.
3. Housing Facilities for personnel within the INEEL boundaries do not exist and shall not be permitted.

20. SITE AND VEHICLE ACCESS REQUIREMENTS

1. Subcontractor's and lower-tier subcontractors' employees shall attend INEEL Site Access Training (SAT) prior to beginning work on site. This training includes Contractor Construction Orientation and General Employee Radiological Training (GERT). SAT is provided at no cost by Contractor every work weekday (Monday - Thursday) and generally lasts 3 to 4 hours. Contact the POC for time and location. SAT must be renewed annually.
2. In addition to the SAT, site-specific training may be required by the individual sites for access. See the Special Conditions for these requirements.
3. Contractor will provide off-site inspections of equipment (i.e., large complex pieces of equipment) when personnel are available, with a timely request from Subcontractor. Contractor disclaims the liability for Subcontractor-owned equipment, inspected by Contractor, for on-or off-site use.

4. Subcontractor shall, under regulations prescribed by the Subcontract, use only established roadways, or use temporary roadways constructed by Subcontractor when and as authorized by Contractor. Temporary roadways shall be constructed and maintained at Subcontractors expense and allow safe operation.

If temporary roads are constructed, they shall be removed and the area returned to the original condition and shall meet the individual Storm Water Pollution Prevention Plan guidelines for the area (e.g., INTEC, TRA, or TAN) after completion of construction, unless otherwise approved by Contractor.

When materials are transported in prosecuting the work, the transporting vehicle shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or Local law or regulation. When it is necessary to cross curbs or sidewalks, Subcontractor shall protect them from damage. Subcontractor shall repair, or pay for the repair of, any curbs, sidewalks or roads that are damaged by its, or any of its lower-tier subcontractors', activities.

5. All vehicles, including jobsite trailers, shall be clearly marked with Subcontractor's name in one (1) inch (minimum) letters on each side of the vehicle. Signs shall have a professional appearance; magnetic signs are acceptable. This requirement applies to all areas of the Site, however, vehicles not complying shall be denied access into INTEC, RWMC, TRA, TAN and WROC.
6. Regulations to Operate Vehicles On Site

The following regulations have been established for every operator of a motor vehicle within the boundary of the INEEL Site:

- a. Every vehicle operator shall possess a valid driver's license for the vehicle being operated.
- b. All vehicles shall be regularly serviced and inspected to insure their safe operating condition.
- c. Do not load vehicle so as to obscure the driver's view in any direction or to interfere with the safe operation of the vehicle. In the event that vision is obscured, a signalman shall be used to direct the vehicle movement. When a signalman is used, the primary responsibility for the safe operation of the vehicle remains with the operator.
- d. No vehicle transporting personnel shall be moved until the operator has ascertained that all persons are seated and seat belts, if provided, are securely fastened. Passengers riding in the back of pickup trucks is forbidden.
- e. Motor vehicles shall be equipped according to their use with all pertinent safety equipment.
- f. Operators shall perform a pre-operation and safety inspection to ensure that the vehicle is in safe operating condition in accordance with equipment manufacturer's recommendations.
- g. Observe the posted speed limits.
- h. Pedestrians always have the right-of-way and shall walk on the sidewalks whenever possible. Where sidewalks are not available, pedestrians shall walk on the left road shoulder facing traffic and shall stay/stand clear of moving vehicles.
- i. All vehicle operators and pedestrians shall report unsafe vehicle or pedestrian conditions and/or accident near misses to Contractor.

7. Idaho Nuclear Technologies and Engineering Center (INTEC)

- a. Vehicles entering INTEC, Monday through Thursday between 7:15 a.m. and 5:00 p.m., shall enter through the West Guard Post, Building INTEC-661. TLD badges shall be assigned to the aforementioned Guard Post.  
From 5:00 p.m. to 7:15 a.m., vehicles may enter and leave via the East Guard Post, Building INTEC-697. All vehicles leaving the INTEC area between 7:15 a.m. and 5:00 p.m. shall exit via INTEC-697. Entry and exit during off hours and on weekends and holidays shall be scheduled through Contractor.
  - (i) Access requirements for specialty vehicles shall be determined on an as-needed basis. The issuance of Specialty Vehicle Access Passes shall be obtained through written notification to Contractor 4 work days in advance of vehicle need. The written notification must identify the anticipated duration of vehicle need.
  - (ii) Vehicles are restricted from transporting personnel into and out of INTEC. Material, equipment and supplies taken into the INTEC area shall be only for the support of INTEC projects, not for projects at other site locations.
  - (iii) Personnel exiting the East Guard Post with a vehicle, shall deposit their TLD/dosimeter badges in a "drop box" located at the East Guard Post, INTEC-697.

These badges shall be returned to the West Guard Post (INTEC-661) before 7:00 a.m. of the following day. Should re-entry into the INTEC be required during the day shift, it shall be necessary for the individual(s) to obtain their own dosimeter badge from the East Guard Post drop box.

- (iv) There shall be RCT coverage at the East Guard Post from 7:00 a.m. through 5:15 p.m., Monday through Thursday.
  - (v) Personnel normally entering and exiting the INTEC on foot through the East Guard Post may have their TLD/dosimeter badges assigned to said guard post.
- b. All earth-moving and related equipment including, but not limited to, dump trucks, front-end loaders, backhoes, rollers, tampers, compactors and crane buckets must be surveyed by a RCT upon completion of work. Equipment shall not be removed from INTEC, used, or taken to another facility without this survey taking place.

These surveys shall take approximately 8 hours to perform and shall normally be performed on a back shift. The surveys shall be requested by submitting a completed "Request for RCT Survey of Earth Moving Equipment" form to Contractor. Forms are available from Contractor at INTEC-698. Forms must be submitted before 2:00 p.m. of the work day prior to the date on which the survey is requested. Completed request forms shall be returned to Contractor upon completion of the survey.

All equipment shall be visually inspected by Subcontractor for oil, hydraulic or other fluid leaks. Repairs shall be made before equipment is brought on site. Prior to the INTEC exit survey, Subcontractor shall clean its equipment as appropriate to insure that a thorough RCT survey can be performed. Precautions shall be taken to keep equipment fluids, filters, or other materials from absorbing possibly contaminated particles when working in areas in which such precautions are required.

c. **Property Pass Compliance**

- (i) All property, Government-owned, or property which could reasonably be mistaken for Government property, and all private personal property that is to enter or leave INTEC must be accompanied by authorization for removal. Letter of authorization, or any one of three recognized property passes below, shall be required:
  - A. Temporary Property Pass, 9-ID, valid for up to six months at INTEC.
  - B. Permanent property pass affixed to the property and identifying the S# of the employee authorized to transport the property.
  - C. Private, Personal Pass, Contractor form 6115 issued to authorize movement of any personal property into or out of the INTEC.
- (ii) For any questions on items which do not fall within the scope of this authorization, or for any other questions which may arise concerning this authorization, contact the INTEC Physical Security Operations Office.

8. **Test Reactor Area (TRA)**

a. **Personnel Access**

- (i) Personnel access into TRA is through the TRA Access Control Facility (ACF), TRA-658, located in the south TRA perimeter. Personnel entering must have a properly coded key card to access through the card readers. Individual's card, (i.e., their security pass), may be programmed to allow access or personnel may obtain a visitor's key card at the Security Post in the ACF. Access authorization can be requested on the Power Reactor Programs form, which is available from Contractor Construction Manager.
- (ii) Personnel access into TRA/TRA Security Areas is by key card reader at the access point into the area. PRP form-350 may be used to gain individual key card access or a visitor

card may be obtained at the ACF. No uncleared personnel are authorized access except by visitor key card.

Subcontractor personnel are not allowed in any areas outside of those identified by the work scope.

- (iii) Personnel access into ATR-670 requires an "L" security clearance and RAD I training. All personnel performing work in ATR-670 shall be RAD II trained.
- (iv) Movement in TRA on roadways and walkways is controlled by the TRA Landlord. Pike street is closed to all through traffic.

b. Construction Vehicle Entry

- (i) All construction vehicles shall enter TRA through the TRA Vehicle Monitoring Facility (VMF) at the Access Control Facility (ACF) except for oversized equipment. Special arrangements for vehicles classified as "oversized" shall be made with Contractor.
- (ii) No vehicle passengers may pass through the VMF, but must process through the ACF.
- (iii) All vehicles entering or leaving TRA are inspected in the VMF for prohibited items, contraband and Special Nuclear Materials. Peak traffic times at the VMF are 6:30 a.m. to 7:30 a.m. and 5:00 p.m. to 5:40 p.m. Process time through the VMF varies with the size of the vehicle and the volume of traffic. Vehicle traffic after 5:40 p.m. and before 6:30 a.m. must have prior approval through Contractor on a daily basis.
- (iv) Traffic entering/exiting TRA shall be minimized. Subcontractor shall observe the following guidelines:

- A. Tools and materials for use elsewhere shall not be routinely transported into and out of TRA. In general, all tools, materials and equipment needed and associated with a job shall be staged in TRA and remain within TRA for the duration of the contract.
- B. Routine vehicle entry for personnel transportation or delivery of hand-carried items (identified as 25 lbs. or less) shall not be permitted access.

Vehicle entry for delivery of materials and tools shall be permitted, however, frequency of entry shall be minimized through planning (transporting an accumulation of items to eliminate need for daily entry). Abuse of these requirements may result in more restrictive regulation of vehicle access.

- C. Construction vehicles shall not be parked around the ATR (TRA-670) except in the designated parking area south of the Maintenance support Building, TRA-625, or along Cod, Mackerel, Bass, or Grayling Streets. Specifically no vehicle shall be parked in the approach to ATR doors until permission to enter the building has been obtained and door opening is imminent.
- D. The contents of all construction vehicles which have been in a buffer area, CA, HC, or ARA, that are leaving TRA shall be surveyed for radioactive contamination. The survey shall be completed prior to loading the vehicle. Subcontractor shall notify the RCT in a timely manner (2 work hours) prior to loading the vehicle. All empty vehicles, including the equipment normal to the operation of the vehicle, that have not entered a radiological control area, are exempt from the survey requirements.

A 2-work-hour advance notification is valid only for small quantities of equipment and material (i.e., that can be surveyed in approximately 15 minutes)

and can be loaded in a van or pick-up truck. 1 work day advance notification is required for larger quantities of equipment/materials, (e.g., dump truck).

- E. All excavation equipment is required to have a complete RCT survey before leaving TRA. Subcontractor shall notify the RCT at least 1 work hour prior to arrival at the VMF.

9. Test Area North (TAN)

- a. Access is through the guardhouse, Building TAN-676 located on the south perimeter of the area. Vehicle entry for construction vehicles is through the Vehicle Access Gate (VAG) adjacent to the guardhouse. Vehicles entering or leaving TAN must pass through this facility and shall be surveyed and searched. At peak traffic time, 6:40 a.m. to 7:15 a.m. and 4:45 p.m. to 5:15 p.m., a delay of up to 15 minutes can be expected.

Subcontractor personnel are not allowed in areas not established in the Subcontract.

- b. Traffic entering/exiting TAN shall be minimized. Subcontractor shall observe the following guidelines:
  - (i) Vehicles are restricted from transporting personnel into and out of TAN.
  - (ii) Material, equipment, and supplies taken into the TAN area shall be used only for the support of TAN projects, not for projects at other site locations.
- c. In order to minimize traffic through the VAG and the need for extensive Radiation Protection survey, Subcontractor shall observe the following guidelines:
  - (i) Tools and materials for use exclusively at TAN shall be left within TAN until the need for them has ended.
  - (ii) Provide a vehicle within TAN for transportation of personnel, material and tool delivery to work areas and other uses. Routine vehicle entry for personnel transportation or delivery of hand-carried items (identified as 25 lbs. or less) is not permitted.
  - (iii) Park construction vehicles in designated parking areas only.
  - (iv) Request that a RCT survey the contents of vehicles for radioactive contamination before leaving TAN.

- 10. Property Pass requirements are applicable for all areas of the Site. Contact Security at the Main Guard Post if you have questions.

**21. ENVIRONMENTAL, SAFETY AND HEALTH, AND INDEMNIFICATION**

- 1. The environmental, safety and health requirements established by this Subcontract shall not relieve Subcontractor from complying with more stringent laws and regulations issued by a Federal, State or Local agency, as well as any manufacturer's instructions.
- 2. Subcontractor shall take all reasonable precautions in the performance of the work under the Subcontract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of Contractor. Contractor shall notify Subcontractor, in writing, of any noncompliance with the provisions of this Article and the corrective action to be taken. After receipt of such notice, Subcontractor shall immediately take the directed corrective action.

**3. Subcontractor's Failure to Conform to Laws**

In the event Subcontractor fails to comply with Federal, State and Local laws and regulations or requirements of DOE, Contractor may, without prejudice to any other legal or contractual rights of Contractor, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued based on the acceptability of corrective actions at the discretion of the POC. Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

- a. Contractor reserves the right to have removed from the site and deny re-entry to any employee (including supervision and management):
  - (i) Found to be in an imminent danger situation created by violating procedures covering fall protection, confined space entry and work, or lock/tag requirements where injury could occur;
  - (ii) Advising an employee to work in an unsafe condition/position; or
  - (iii) Willfully violating any ES&H policy, procedure, rule or regulation.

If Subcontractor's superintendent/management knowingly places an employee (including himself) in an imminent danger situation, this Subcontract may be terminated for default.

- b. In the event of OSHA or EPA violations or unsafe practices involving imminent danger to personnel or environment, immediate action shall be taken to stop work and correct the hazardous situation.

**4. OSHA 29 CFR, Part 104 (Recording and Reporting of Occupational Injuries) requires that employers covered under this act maintain an OSHA 200 Log or its equivalent. Subcontractor shall submit one copy of its and one copy of each lower-tier Subcontractors' current OSHA 200 Log to the SA quarterly.**

The copies shall be submitted by the 15th of the month after each quarter end (i.e., January 15, April 15, July 15 and October 15) and concurrent with the final progress invoice.

The first quarterly submittal shall cover from award date through quarter end or work completion, if the work is completed within the quarter it was begun.

If copies submitted are copies of the company log and are not project-specific, all entries related to work performed under this Subcontract shall be clearly indicated. If at any time after submittal of the copies of the log, any entry in the log is changed or revised, a copy of the revised log shall be submitted to the SA. Failure to submit the log may result in Contractor withholding of final payment until log receipt.

**5. Weekly Safety Reports**

- a. Safety Meeting Reports shall be maintained at Subcontractor's job site for review.
- b. A written report on project safety statistics shall be provided to the POC on a weekly basis. The report shall tabulate the safety statistics for Subcontractor and all lower-tier subcontractors from the previous week's activities and summarize the same safety statistics for the fiscal year to date. This written report shall be submitted by 9:00 a.m. on the Tuesday following the week being reported. Statistics shall include:
  - (i) Total number of safe hours worked for the week and fiscal year to date.
  - (ii) Number of OSHA recordable cases for the week and fiscal year to date.

- (iii) Number of restricted duty work cases for the week and fiscal year to date.
- (iv) Number of restricted work days for the week and fiscal year to date.
- (v) Number of lost work day cases for the week and fiscal year to date.
- (vi) Number of lost work days for the week and fiscal year to date.

**6. Permits, Compliance and Indemnification**

At its expense, Subcontractor shall comply with all Federal, State, County and Municipal laws, ordinances and regulations applicable to the work to be performed. Subcontractor shall secure all required licenses or permits prior to commencing the work.

Subcontractor shall indemnify and hold harmless Contractor, Bechtel BWXT Idaho, LLC and the Government from all damages of any nature whatsoever that they may incur as a result of Subcontractor's failure to secure or comply with all required licenses or permits prior to commencing work. Subcontractor also agrees, if requested, to assume at its own expense the defense of suits that may be filed against Contractor, Bechtel BWXT Idaho, LLC, or the Government as a result of Subcontractor's failure to comply with any applicable Federal, State, or County laws, ordinances, or regulations.

Subcontractor agrees to indemnify and hold harmless Contractor, Bechtel BWXT Idaho, LLC, the Government and each of their respective officers, directors, employees, agents, contractors and successors in interest from all liability, fines, claims; remediation, corrective action or other response action costs and any associated expenses (including costs of defense, settlement, attorney's fees and costs incurred in enforcing this indemnification), that any of the aforementioned parties may incur as a result of injury or damage to persons or property, contamination of or adverse effects on the environment, or any violations or alleged violations of Federal, State, or Local statutes, ordinances, laws, orders, rules or regulations related to Subcontractor's work at the INEEL; including but not limited to the following Federal laws and any State or Federal implementing laws or regulations: the Clean Water Act (CWA) as amended, 33 U.S.C.A. Scn 1251 et seq, including, but not limited to, liability for fines incurred by the indemnified parties for Subcontractor's violations of the Construction Storm Water Discharge Regulations or requirements; the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended, 42 U.S.C. Scn 9601 et seq; the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Scn 6901 et seq; the Clean Air Act (CAA) as amended, 42 U.S.C. Scn 7401 et seq; the Toxic Substances Control Act (TSCA) as amended, 15 U.S.C.A. 2601 et seq; the Atomic Energy Act (AEA) as amended, including, but not limited to, DOE orders and ALARA requirements, 42 U.S.C.A. 2014 et seq; and the Price Anderson Amendments Act of 1988 (PAAA) as amended, 42 U.S.C. Scn 2210 et seq; including, but not limited to applicable nuclear safety regulations, requirements or orders.

This indemnification also covers the aforementioned types of liability that arise from or are related to Subcontractor's generation and management of, arranging the transportation for, treatment of, storage of, or disposal of waste generated at the INEEL at a treatment, storage or disposal facility or other location that has not been approved in writing by Contractor SA.

Subcontractor also indemnifies and holds harmless Contractor for all proceeding costs incurred by Contractor as defined under section I.106 of Contractor's prime contract with DOE (contract #DE-AC07-99-ID13727) for proceedings falling within the coverage of that Section as a result of, or related to, the actions or omissions of Subcontractor. The full text of these requirements is also available at DEAR 970.6204-61, COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS.

Subcontractor shall flow down all of the provisions of this Article and all Environmental, Safety and Health Requirements in all lower-tier subcontracts, at any level, to ensure optimum protection of the indemnified parties.

22. RADIOLOGICAL CONTROL REQUIREMENTS FOR SUBCONTRACTOR AND/OR LOWER-TIER SUBCONTRACTOR PERSONNEL

1. Certain facilities at the INEEL are classified as Radiation Control Areas (RCA's). Where the Subcontract designates that the construction work shall be performed in an RCA, the following requirements apply:

- a. Subcontractor shall provide a list to the POC of Subcontractor and lower-tier subcontractor personnel performing work in radiation or Contaminated Surface Control Areas (CSCA's) 2 work days prior to entrance of personnel into the areas. The list shall contain the personnel names, social security numbers and "S" numbers.
- b. Subcontractor shall conduct its radiological control operations in accordance with the SRM, including the Radiological Control Information Management System (RCIMS), and all other restrictions established by Contractor.

Subcontractor shall take all reasonable precautions in the performance of its work at the INEEL to protect the health and safety of its employees and members of the public and to minimize danger from all hazards to life and property. Contractor's Radiological Control Technicians (RCT's) shall assist in identifying and resolving radiological control problems. The RCT's will provide radiological surveillance over all construction activities and advise Contractor's POC on matters concerning radiation safety related to plant activities or conditions affecting the construction work. Subcontractor shall comply with all directions relative to radiological safety given by Contractor POC.

- c. Contractor shall provide the required radiological protective clothing and radiological respirators required by the Radiological Work Permit (RWP) without charge to Subcontractor.
- d. Subcontractor shall plan its work to minimize the transfer of equipment into and out of the RCA.
- e. Disposition of Contaminated Construction Equipment, Tools and Material.
  - (i) Subcontractor shall use its own equipment in performing the required work under the Subcontract. All tools, vehicles, equipment and material shall be inspected for radioactive contamination by the assigned RCT prior to removal from the Radiological Buffer Area (RBA).
  - (ii) Should Subcontractor's tools, materials, or equipment become contaminated, they shall be decontaminated by Contractor at no charge prior to removal from the RCA. Subcontractor shall allow a minimum 10 work days (holidays and weekends excluded) for Contractor to accomplish decontamination.
  - (iii) If decontamination proves impracticable or impossible, the tools, material, or equipment in question shall be retained by Contractor, a confiscation report completed and an equitable adjustment, with an allowance for overhead but no profit, shall be negotiated with Subcontractor, or at Contractor's option, the tools will be replaced by Contractor.

The tool/equipment reimbursement schedule to be applied is:

- A. Personal Clothing at 100% of replacement cost.
- B. Tools/Equipment valued less than \$1,000.00 at 95% of replacement cost.
- C. Tools/Equipment valued at \$1,000.00 or more, if less than one year old or at top of depreciation schedule, at 75% of replacement cost or if at the bottom of, or off, the depreciation schedule, at 50% of replacement cost.

23. PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS

Individual occupational radiation exposure records generated in the performance of work under the Subcontract shall be subject to inspection by Contractor and shall be preserved by Subcontractor until disposal is authorized by Contractor or, at the option of Subcontractor, delivered to Contractor upon completion or termination of the Subcontract. If Subcontractor exercises the foregoing option, title to such records shall vest in Contractor upon delivery.

## 24. QUALITY ASSURANCE AND CONTROL

1. In accordance with 10 CFR 830, Nuclear Safety Management, work performed in, or for, facilities which are identified by Contractor as Nuclear, in the Subcontract, is subject to enforcement in accordance with 10 CFR 820, Procedural Rules for DOE Nuclear Activities. When performing work in, or for, DOE Nuclear Facilities, Subcontractor may be held liable for violations of requirements for quality assurance. Compliance with the requirements for quality assurance, as defined by the Subcontract, is considered by Contractor to achieve compliance with applicable portions of 10 CFR 830, Nuclear Safety Management, Subpart 120, Quality Assurance.
2. Subcontractor shall perform all work in a skillful and workmanlike manner and assure that all work performed under the terms of the Subcontract is completed in compliance with Subcontract requirements. Unless otherwise specified, Subcontractor shall perform all work as defined by the Subcontract, in accordance with a Contractor-accepted, Quality Assurance Program and/or Plan. The Subcontract identifies these specific quality assurance standards and/or elements, or portions thereof, which are applicable to the scope of work. Additionally, the Subcontract may identify by reference, Contractor requirements and/or procedures which either implement or provide the necessary interface, with provisions of Contractor quality assurance program. Unless otherwise specified, lower-tier subcontractors and suppliers are required to execute assigned work in accordance with Subcontractor's approved Quality Assurance Program and/or plan the associated implementing procedures.
3. Subcontractor shall provide all necessary and required inspection, testing and/or NDE services, hereinafter referred to as "inspection". Said inspection shall sufficiently assure, as a minimum, compliance with all technical requirements as defined by the Subcontract. Subcontractor shall assure that all work meets or exceeds the technical requirements prior to any testing, inspection, or other examination, to be performed by Contractor. Contractor's representative will provide any inspection, testing and/or NDE services to Subcontractor, specified by the Subcontract. Inspection, tests and/or examinations performed by Contractor's representative in no way relieves Subcontractor from maintaining a quality assurance and control system that complies with the Subcontract.

All material, equipment, items and/or processes which are identified by the Subcontract as requiring inspection, verification, test, or witness, by Contractor or Contractor's representative, shall be considered as mandatory hold points. Subcontractor shall proceed beyond a mandatory hold point only upon authorization by Contractor representative. Bypassed hold points shall be identified to Contractor immediately upon discovery. Subcontractor shall take all actions required to return the work to the required hold point status and schedule the required inspection, at no cost to Contractor.

For required on-site inspections, tests, or examinations, Subcontractor shall provide notification to Contractor a minimum of 4 work hours in advance of the required inspection, test, or examination, unless otherwise specified. For required on-site receipt inspections, the required receipt inspection(s) must be performed within 3 calendar days after the item, material and/or equipment has arrived on site.

4. As specified by the Subcontract, selected on-site construction materials testing shall be performed by Contractor, at no cost to Subcontractor. Unless otherwise specified, Subcontractor shall notify Contractor 1 work day in advance of the required testing service.

Subcontractor shall supply all necessary labor and/or facilities as may be required by the applicable standards, codes and/or technical specification, to conduct necessary and/or required testing.

Subcontractor is specifically responsible for providing all labor and equipment necessary for the retrieval of

fresh concrete, asphalt and backfill samples, as well as other materials, as required by the technical specifications.

5. For required off-site inspections, tests, or examinations, Subcontractor shall provide notification to Contractor a minimum of 10 work days prior to the scheduled date for performance of the required inspection, test, or examination, unless otherwise specified.
6. Subcontractor shall, without charge to Contractor, replace or correct all work which does not conform to the Subcontract. Contractor reserves the right to an appropriate adjustment in price for any non-conforming work for which express acceptance is granted by Contractor. Non-conforming work which is not corrected by Subcontractor may result in:
  - a. Corrections made by Contractor with all associated costs charged to Subcontractor; or
  - b. Termination for default.

## **25. MATERIALS AND WORKMANSHIP**

### **1. New Materials**

Unless otherwise specifically approved by Contractor, all equipment, materials, or products, including those components, parts and materials which are permanently installed into systems, subsystems and/or assemblies, shall be new and of the grade/type specified by this Subcontract. No mixed manufacturers' or manufacturing production lots will be accepted. All workmanship shall be performed in a skillful and workmanlike manner consistent with the specifications, drawings, stated requirements and other applicable criteria of this Subcontract.

### **2. Suspect and Counterfeit Materials**

If the following materials to be furnished under this Subcontract will be used in a U.S. Government-owned facility, they shall be manufactured domestically, i.e., within the United States of America. Evidence of deliberate misrepresentation of any item(s)/component(s)/materials(s) provided under this Subcontract may result in an investigation to determine the validity of certification, fraud and/or forgery.

#### **Fasteners**

Fasteners, as defined in Title 15, United States Code (U.S.C) Chapter 80, section 5402 of the Fastener Quality Act, that are delivered to Contractor, under this Subcontract shall meet the "Testing and Certification of Fasteners" requirements specified in Section 5404 (a), (b) and (c) of the Act, by a laboratory accredited in accordance with the procedures and conditions specified in Section 5405.

Fasteners shall exhibit grade marks and the manufacturer's identification symbol (headstamp) as specified in the referenced specification or in the body of this Subcontract. Fasteners having a headmark which is displayed on U.S. Customs Service Suspect Fastener Headmark List will not be accepted.

#### **Electrical Items**

Electrical items and equipment, received under this Subcontract, shall exhibit legible amperage and voltage ratings, operating parameters, and the manufacturers' labels and identification. Items shall be supplied in the manufacturer's original packaging, and exhibit the applicable Underwriters Laboratory (UL) or Factory Mutual (FM) labels.

#### **Mechanical items**

**Mechanical/Piping items and equipment (channel, sheet, plate, bars or fittings, flanges, valves, pipe, tubing) delivered under this Subcontract shall exhibit the manufacturers' labels and identification.**

26. **CONTRACTOR INSPECTION AND OVERSIGHT**

1. **Any duly authorized representative of Contractor retains the right to audit, assess, inspect, witness, or test all work or products associated with the performance of the Subcontract. Right of access to any and all Subcontractor and lower-tier subcontractor jobsites and facilities, as well as all material and equipment supplier facilities, shall be afforded, at all reasonable times. Verification of work processes or product quality by Contractor in no way relieves Subcontractor of implementing a quality assurance and control system that complies with the Subcontract.**

Should said Contractor activities reveal nonconforming work attributable to Subcontractor, Subcontractor shall reimburse Contractor for all expense associated with all additional inspection necessitated by the non-conformance and perform satisfactory reconstruction and or restoration at no cost to Contractor.

2. Contractor inspections are for the sole benefit of Contractor and do not;
  - a. Relieve Subcontractor of responsibility for damage to, or loss of, material before acceptance;
  - b. Constitute or imply acceptance;
  - c. Relieve Subcontractor of responsibility for compliant quality assurance and control; or
  - d. Affect the rights/remedies of Contractor, or the Government, after acceptance of the work.
3. Conditions observed which are adverse to quality, including unsatisfactory implementation of Subcontractor's quality assurance program or departure from the technical specification requirements, will be identified to Subcontractor for immediate resolution and corrective action. Failure to resolve identified deficiencies may be cause for issuance of a Stop Work Order(s). Deficiency Reports and/or Stop Work Orders require a satisfactory evaluation from Subcontractor relative to the direct and root causes, the proposed remedy and delineation of measures taken to prevent recurrence.

27. **VENDOR DATA REQUIREMENTS**

1. Subcontractor shall furnish to Contractor copies of required data for disposition sufficiently in advance of the date that the material/equipment is required to be installed to meet the accepted construction schedule. The Vendor Data Schedule (VDS) summarizes the submittal requirements of the Subcontract and generally specifies the timing for each required submittal. Vendor data for all material and equipment requiring a disposition shall be submitted, reviewed, assigned a disposition code by Contractor and returned to Subcontractor.
2. Subcontractor and its lower-tier subcontractors shall perform no work for which the vendor data has not been reviewed and dispositioned. Any delay caused by Subcontractor's failure to submit vendor data in a timely manner for Contractor review shall not be excusable or compensable. If submitted vendor data items are unacceptable, no excusable delay shall accrue therefrom, regardless of the number of resubmittals made by Subcontractor or lower- tiers.
3. Contractor's vendor data disposition shall not affect or relieve Subcontractor from responsibility for performance of work in compliance with Subcontract. Vendor data causing any change to design details, layouts, calculations, analyses, test methods, procedures or any other Subcontract requirement shall be submitted with a written description of the affected change.
4. Subcontractor shall submit concurrent with the invoice dates an updated Construction Vendor Data Submittal Log (CVDSL). Failure to submit the CVDSL may result in withholding of payment until CVDSL receipt.

5. Information provided on the CVDSL must correlate with Contractor accepted construction schedule to assure prosecution of the work in accordance with the said construction schedule. The CVDSL shall clearly indicate expected or actual submittal dates and the disposition status of all submitted data.

## 28. BRAND NAME OR EQUAL

1. The term "brand name" includes identification of products by reference to a manufacturer's make and/or model. If products specified by this Subcontract have been identified by a brand name description, such identification is intended to be descriptive, but not restrictive and is to indicate the minimum standard of type, quality and capacity acceptable for incorporation into the work covered by the Subcontract. The products of other manufacturers may be considered as being acceptable, provided that: such products fully meet or exceed all minimum structural, use and operational features of the particular manufacturer's product specified and provided the other manufacturer's product is interchangeable and can be adequately incorporated within the allocated space in the building or structure; and the delivery of the product shall not delay, or in any other way compromise, the completion date(s) of the Subcontract. "Equals" shall be installed per their manufacturer's installation procedures.

Subcontractor shall be responsible to verify the equality of the specified product and the proposed "equal." This shall include investigation of catalog cuts and other manufacturer's data, warranty, maintenance, integration with specified products within the same system and all other salient features of the specified product.

2. Post award, acceptance of an "equal" proposed in lieu of a brand name product referenced in the Subcontract, will be at the sole discretion of Contractor. Cost savings realized through "equal" incorporation into the Subcontract shall be shared between Contractor and Subcontractor.  
In the event the Subcontract is modified to incorporate an "equal" which necessitates revisions to other aspects of the work, (e.g., structures, foundations, footings, services, systems, piping, electrical installation) the cost to accomplish any such revision shall be borne by Subcontractor. Maintaining the schedule while seeking acceptance of an "equal" is the responsibility of Subcontractor.

All "equal" proposals shall provide adequate supporting data necessary to make an "equal" determination and shall be submitted using the CID form. If accepted, supporting data shall be submitted in accordance with vendor data schedule requirements.

## 29. SCHEDULING AND PLANNING REQUIREMENTS

Subcontractor is responsible for planning and scheduling its work in a reasonable and logical manner to assure the completion of all work required in the Subcontract within the time specified. This Article describes the requirements for the form, format, frequency and minimum content for submittal of acceptable construction schedules. Payments may be withheld until the schedule is accepted by Contractor. Once accepted, changes in sequence, duration, or the inclusion of additional activities that have the potential to impact Contractor interfaces or the Subcontract completion date(s), must be accepted by Contractor prior to inclusion into the schedule.

### 1. Form

- a. The form of construction schedule for this work shall be either a Bar Chart Schedule or a Critical Path Method (CPM) Schedule, as required by the Special Conditions.
- b. The total value of all work activities shall be equal to the total dollar value of the Subcontract. Payments shall be made only for completed, acceptable work in-place. The schedule shall show the work planned for each payment period and the amount of the work completed within each payment period. The value of the completed work shall be as agreed between Contractor and Subcontractor based upon the schedule submittal and the original, approved schedule of values for each on-site work activity.
- c. For integration with Contractor project software, Microsoft Project or compatible software is

preferred. The initial schedule shall be submitted in hard-copy form (and disk upon request) with monthly updates in hard copy (and disk upon request) and are to be submitted to Contractor in accordance with Special Conditions or requirements herein.

2. Format

- a. The schedule shall be submitted as an original with three (3) copies. The schedule shall be based upon weekly increments of work. As a minimum, the schedule shall show events or activities for:
  - (i) Notice to Proceed;
  - (ii) Mobilization;
  - (iii) All milestones required within the Special Conditions;
  - (iv) All work elements, including fabrication and installation of materials and equipment and submittals for specific training, procurement and vendor data, are to be broken out and logic-tied to related work activities, unless otherwise specified in the Special Conditions;
  - (v) Delivery of Subcontractor-furnished materials or equipment;
  - (vi) Any interface with the work of others;
  - (vii) CID's incorporated which affect the critical path;
  - (viii) Required utility or plant outages (shown as predecessor to work activities requiring submittals);
  - (ix) Punchlist;
  - (x) Demobilization;
  - (xi) Schedule Curve shall be based on percent complete of activity budgeted work hours (spread by early and/or late activity dates), if required, as specified in the Special Conditions;
  - (xii) Revenue Curve shall be based on percent complete of activity budgeted values (spread by early and/or late activity dates) as specified in the Special Conditions.
- b. The duration of each activity shall be limited to a reasonable length of time. If a CPM schedule is required, the duration shall be as specified in the Special Conditions.
- c. Activities shall the detailed work elements, sufficient to represent that Subcontractor understands the work and has planned for all critical items. No schedule impact shall be recognized by Contractor for non-critical work items.
- d. Subcontractor shall date each submittal of the schedule. Each schedule submitted during the performance period shall show the current time line, depicting the amount of actual work completed against the amount of work planned.
- e. Each schedule activity for on-site work shall be work hour, quantity and revenue loaded.
- f. It is required for each activity to show an original "Baseline" or "Target Bar" for that activity's original early or late date as specified in the Special Conditions.

3. Frequency

Schedules shall be submitted as follows:

- a. The initial bar chart schedule is due within 7 calendar days after award. Should the Special Conditions state that a bar chart schedule is required, then the final revision of the bar chart schedule is due within 14 calendar days after award. Should the Special Conditions state that a CPM schedule is required, then the initial schedule shall be a bar chart due 7 calendar days after award and the initial CPM submittal shall be due no later than 14 calendar days after award. The final revision to the CPM shall be due within 28 calendar days after award.
- b. Submittal of an updated Schedule of Values shall be made concurrent with invoice dates and shall include budgeted dollars and work hours, percent complete and earned dollars and work hours as required by the Special Conditions.
- c. An updated bar chart or CPM (as required in the Special Conditions) schedule shall be submitted monthly to the SA, concurrent with invoice dates. Failure to submit the foregoing may result in withholding of payment until schedule receipt and acceptance by Contractor.

4. Content

- a. The construction schedule shall contain all items of work necessary for the successful completion of the Subcontract and as described herein and within the Special Conditions. Work activities subcontracted to lower-tiers shall be so identified on the schedule. Activity time delays shall not automatically mean that an extension of Subcontract time is warranted or due Subcontractor.
- b. Events which occur during the performance of the Subcontract, which impact Subcontractor's ability to progress as planned, shall be shown on the updated monthly schedule. Each impact to the critical path, if any, shall be termed a "fragnet", if using the CPM method. Proposed schedule impacts shall be submitted to Contractor for acceptance, with each proposal, for cost or schedule changes affecting the critical path.
- c. Accepted critical path work, added or deleted, shall be incorporated and shown on the updated monthly schedule. Payment for a change which affected the critical path may be withheld until it is incorporated into the portion of the schedule that it affects.
- d. Should Subcontractor not be making satisfactory progress against its critical path schedule, it shall submit a recovery schedule or schedules for acceptance as directed by Contractor. The recovery schedule shall be of sufficient detail and duration to show how and when Subcontractor shall return to the schedule that supports the Subcontract completion date.

5. Construction Short-Range Schedule

- a. Construction activities shall not be permitted without an accepted construction short-range schedule. A construction short-range schedule format shall be provided at the pre-construction meeting. Subcontractor shall prepare a three-week, look-ahead, construction short-range schedule which includes a status of the activities of the previous weeks' work. The construction short-range schedule shall be submitted for acceptance each week.
- b. The construction short-range schedule shall include as a minimum, all planned work activities which shall occur between the time the schedule is presented and the following three weeks. The level of detail shall be such that Contractor is able to ascertain the type, location and duration of each scheduled activity, the type of materials and equipment to be utilized, and the need for Contractor support (e.g., radiological controls, breathing air, outages, excavations).
- c. The construction short-range schedule shall be utilized as a planning and scheduling tool, as a systematic means to notify other affected organizations of proposed construction activities. This schedule shall also be used to convey vital information to Subcontractor personnel concerning possible safety hazards or other matters affecting construction activities. The schedule also provides a means of ensuring that responsible parties of Contractor are aware of Subcontractor's

presence and activities so that, in the event of an emergency, personnel can be notified and appropriately directed to safe areas.

- d. Each activity on the construction short-range Schedule shall be correlated with the most current construction schedule. No work shall be performed which is not on the construction Short-Range Schedule, unless it is changed for the day's work and approved by Contractor 1 work day in advance of implementing the change.

## 6. Schedule of Values

- a. The Schedule of Values shall be submitted concurrent with the initial bar chart schedule.
- b. With respect to the requirements contained in the "Payment Under Fixed Priced Construction Subcontracts" Article, Subcontractor shall submit to Contractor for approval a "Schedule of Values", which equals the value of the Subcontract. The "Schedule of Values" shall match items of work on the construction schedule and be broken down by work breakdown structure (WBS) as specified in the Special Conditions. The construction schedule shall be quantity, work hour and revenue loaded. In addition to specifying the dollar value associated with each line item in the schedule, the percent that each item represents of the total shall also be indicated. The following example provides information required on the SOV.

### SCHEDULE OF VALUES

(1) SUBCONTRACT NO.: PROJECT TITLE:									
(2) Code of Account	(3) Activity Description	(4) Unit of Meas.	(5) Quantity	(6) Work hours	(7) Labor Dollars	(8) Perm Material Dollars	(9) Other Dollars	(10) % of Total	(11) Total Value
<b>LEGEND:</b> 1) Subcontract No. and Title 2) Code of Account is a numeric designation for construction activities related to the project baseline schedule activity or activities based on the 16 potential divisions as identified in the specifications. 3) A brief description of the code of account activity. 4) Key unit of measure for each code of account activity (i.e., LS-lump sum. lb-pounds, yd <sup>3</sup> -cubic yard). 5) Total quantity of unit measure for each code of account. 6) Total work hours associated with each code of account activity. 7) Total labor dollars for each code of account activity. 8) Total permanent material dollars for each code of account activity. 9) Other Dollars are other project costs as they relate to the specific code of account activity or spread appropriately throughout the various activity accounts. The following are examples of such costs: · misc. indirect construction material (i.e., expendable materials, form work materials, [rentals], etc.); · Construction equipment (Subcontractor owned or rented); · Bonds; · Insurance; · Overhead, G & A; · Profit. 10) Each account percent of total value. 11) Total cost for each code of account activity which is the sum of labor (7), permanent material (8) and other dollars (9). The sum of all code of account activity total costs shall equal the total Subcontract value.									

7. When construction reaches 95% or more complete, Subcontractor shall show an activity on the construction short-range schedule for a formal project walk-through and formulation of a final punch list.

## 30. PROSECUTION OF WORK

1. Subcontractor's construction plan, method of operation and the forces employed shall at all times, during the Subcontract, be subject to evaluation by Contractor and shall be sufficient to insure the completion of the work within the specified period of time. Subcontractor shall furnish sufficient forces, shifts, overtime operations, including weekends and holidays, as may be necessary, to maintain the work on, or ahead of, the accepted construction schedule at all times. If, as determined by Contractor, Subcontractor falls behind the accepted construction schedule which jeopardizes the completion date(s), Subcontractor shall take such steps as may be necessary to recover the lost time and maintain the construction schedule.
2. Accordingly, Contractor may direct Subcontractor to increase the number of shifts, days of work and/or the amount of the construction plant operations and/or overtime operations, all without additional cost to Contractor, until such time as Subcontractor, in the opinion of Contractor, is again maintaining the

construction schedule. Failure of Subcontractor to diligently and progressively proceed with the work and thus maintain the construction on schedule at all times, may result in Contractor terminating Subcontractor for default.

3. Overtime and Holiday Work

- a. Advance notice to Contractor is required as follows: 1 work day for weekend work; 2 work days for swing shift or graveyard shift work; and 4 work hours for all other short duration/intermittent overtime work.
- b. Upon written notice from Subcontractor, 3 work days in advance, Contractor agrees to adequately man the job on Contractor holidays not observed by the Construction Trades.

The following days shall be observed as holidays by Contractor:

New Year's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Week (25 December through 31 December)

4. Normal work hours are 7:00 a.m. to 5:30 p.m., Monday through Thursday, unless otherwise stated in the Special Conditions.

**31. STOP WORK AUTHORITY**

1. **Contractor or the Government may stop all, or any part of, the work in the event the following occurs, or if comparable situations are encountered:**
  - a. **Observation and determination of conditions which present an immediate threat to the life and/or health of employees, workers, or the general public.**
  - b. **Observation of any activity or action which is determined to be a threat to the environment or surrounding, involved ecology.**
  - c. **Observation and determination of any activity that could result in the potential or actual damage to Government material, property, facilities, or equipment.**
  - d. **Subcontractor fails to comply with the Quality requirements of the Subcontract.**
2. **Should the work be stopped by a representative of Contractor or the Government, other than the POC, Subcontractor shall immediately notify the SA and POC.**
3. **Contractor shall issue a work stoppage for an indefinite period of time as may be necessary to effect corrective action or resolution of a specifically identified condition. Subcontractor's failure to comply with "Stop Work" direction pursuant to this Article may result in termination of this Subcontract for default.**
4. **Subcontractor has the authority and is encouraged to stop its work for failure to comply with the**

**terms of this Subcontract. Should the work be stopped by Subcontractor, Subcontractor shall immediately notify the SA or POC. Upon corrective action or resolution of a specifically identified condition, Subcontractor may re-start its work.**

### 32. SUSPENSION OF WORK

1. Contractor may order Subcontractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as may be determined appropriate for the convenience of Contractor. Upon expiration of the period of suspension, Subcontractor shall promptly proceed with the work.
2. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted (1) by an act of Contractor in the administration of this Subcontract, or (2) by Contractor's failure to act within the time specified in this Subcontract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Subcontract (excluding profit) necessarily caused by such suspension, delay, or interruption of an unreasonable period of time and this Subcontract modified in writing accordingly.

However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent (1) that performance would have been suspended, or delayed or interrupted by any other cause, including the fault or negligence of Subcontractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Subcontract.

3. No claim under this Article shall be allowed (1) for any costs incurred more than 20 days before Subcontractor shall have notified Contractor in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order pursuant to Paragraph 1 of this Article), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under this Subcontract. No part of any claim under this Article by Subcontractor shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a suspension within the meaning of this Article.
4. In order to test the effectiveness of the warning evacuation system, a practice drill of not more than 4 hours duration shall be conducted at the convenience of DOE and Contractor, at some time during each calendar year quarter. Subcontractor is eligible for equitable adjustment for any unreasonable delay beyond the 4-hour duration in accordance with this Article.

### 33. DEFAULT

1. If Subcontractor fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in the Subcontract, including any extension, or fails to complete the work within this time, or fails to comply with any of the other provisions of this Subcontract, Contractor may, by written notice to Subcontractor, terminate the Subcontract in whole or in part.

In this event, Contractor may take over the terminated work and complete it by subcontract or other means and may take possession of, and use, any materials, appliances and plant on the work site necessary for completing the work. Subcontractor, however, shall continue with any work not terminated. Whether or not the Subcontract is terminated in whole or in part, Subcontractor and its sureties shall be liable for any damages to Contractor or Government resulting from Subcontractor's failure to prosecute the work with the diligence to insure its completion within the time specified, or from the Subcontractor's failure to complete the work within the specified time, or from the failure of Subcontractor to comply with any other provisions of this Subcontract. This liability includes any increased costs incurred by Contractor in completing the work. With respect to any failure by Subcontractor to prosecute the work, or any separable part, with the diligence to insure its completion within the time specified in the Subcontract, or any failure to comply with any of the provisions of this Subcontract (other than the failure to complete the work within the time specified in the Subcontract), Contractor's right to terminate the Subcontract under this Article may be

exercised if Subcontractor does not cure such failure within 10 calendar days (or more as authorized in writing by Contractor) after receipt of a cure notice.

2. Subcontractor shall not be terminated nor Subcontractor charged with damages under this Article, if:
  - a. The delay in completing the work arises from unforeseeable causes, other than normal weather, beyond the control and without the fault or negligence of Subcontractor.

Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor(s) or subcontractor(s) in the performance of a contract with Contractor, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of lower-tier subcontractor or suppliers at any tier arising from unforeseeable causes, other than normal weather, beyond the control and without the fault or negligence of both Subcontractor and the lower-tier subcontractors or suppliers; and
  - b. Subcontractor, within 10 calendar days from the beginning of any delay (unless extended by the SA), notifies the SA in writing of the causes of delay. The SA shall ascertain the facts and the extent of delay. If, in the judgment of the SA, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the SA shall be final and conclusive on the parties, subject to appeal under the "Disputes" Article.
3. Contractor shall pay for completed and accepted portions of the Subcontract. Subcontractor and Contractor shall agree on the amount of payment. Failure to agree shall be a dispute under the "Disputes" Article. Contractor may withhold, from amounts due to Subcontractor, any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders. In addition, Contractor may withhold all or such portion of any amount due to Subcontractor as, in the discretion of Contractor, is reasonable to offset any damages suffered by Contractor or Government as a result of default by Subcontractor.
4. If the Subcontract completion date passes and the work is not completed, Contractor may forbear effecting its remedies under this Article. If such forbearance extends through completion of the work, consideration for Contractor's forbearance may be negotiated. Final payment may be withheld until satisfactory consideration is established.
5. If, after termination pursuant to this Article, it is determined that Subcontractor was not in default, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.
6. The rights and remedies of Contractor or the Government in this Article are in addition to any other rights and remedies provided by law or under the Subcontract.

#### 34. TERMINATION FOR CONVENIENCE

1. Contractor may terminate the Subcontract in whole or in part. The SA shall terminate by delivering to Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
2. After receipt of a Notice of Termination and except as directed by the SA, Subcontractor shall immediately proceed with the following:
  - a. Stop work as specified in the notice.
  - b. Place no further lower-tier subcontracts or orders (referred to as Subcontracts in this Article) for materials, services, or facilities, except as necessary to complete any non-terminated portion of the Subcontract.

- c. Terminate all subcontracts to the extent they relate to the work terminated.
  - d. As directed by the SA, assign to Contractor or the Government, all rights, title and interest of Subcontractor under its terminated lower-tier subcontracts, in which case Contractor or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those termination's or;
  - e. Settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts with approval or ratification to the extent required by Contractor; the approval or ratification shall be final for purposes of this Article.
  - f. As directed by the SA, transfer title and deliver to Contractor or the Government:
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies and other material produced or acquired for the work terminated; and
    - (ii) The completed or partially completed plans, drawings, information and other property that, if the Subcontract had been completed, would have been furnished to Contractor.
  - g. Complete performance of the work not terminated.
  - h. Take any action that may be necessary, or that the SA may direct, for the protection and preservation of the property related to the Subcontract that is in the possession of Subcontractor and its lower tiers and in which Contractor has or may acquire an interest.
  - i. Use its best efforts to sell, as directed or authorized by the SA, any property of the types referred to in subparagraph f herein; provided, however, that Subcontractor:
    - (i) Is not required to extend credit to any purchaser; and
    - (ii) May acquire the property under the conditions prescribed by and at prices approved by, the SA. The proceeds of any transfer or disposition shall be applied to reduce any payments to be made by Contractor under its Subcontract, credited to the price or cost of the work, or paid in any other manner directed by the SA.
3. After termination, Subcontractor shall submit a final termination settlement proposal to Contractor in the form and with the certification prescribed. Subcontractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing upon written request of Subcontractor within this six months period.
- However, if Contractor determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If Subcontractor fails to submit the proposal within the time allowed, Contractor may determine, on the basis of information available, the amount, if any, due Subcontractor because of the termination and shall pay the amount determined.
4. Subject to Paragraph 3 herein, Subcontractor and Contractor may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work performed. However, the agreed amount, whether under this Paragraph 4 or in Paragraph 5, exclusive of costs shown in subparagraph 5.b, may not exceed the total Subcontract price as reduced by:
- a. The amount of payments previously made; and
  - b. The Subcontract price of work not terminated. The Subcontract shall be amended and Subcontractor paid the agreed amount. Paragraph 5 of this Article shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

5. If Subcontractor and Contractor fail to agree on the whole amount to be paid to Subcontractor because of the termination of work, Contractor shall pay Subcontractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph 4 of this Article:
  - a. For Subcontract work performed before the effective date of termination, the total (without duplication of any items) of:
    - (i) The cost of the work;
    - (ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the Subcontract if not included in the costs submitted under this Article; and
    - (iii) A sum, as profit on the costs submitted under this Article, determined by Contractor under FAR 49.202, in effect on the date of the Subcontract, to be fair and reasonable; however, if it can be reasonably concluded that Subcontractor would have sustained a loss on the entire Subcontract had it been completed, the SA shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
  - b. The reasonable costs of settlement of the work terminated, including:
    - (i) Accounting, legal, clerical and other expenses reasonably incurred for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation and other costs reasonably incurred, for the preservation, protection, or disposition of the termination inventory.
6. Except for normal spoilage and except to the extent that Contractor expressly assumed the risk of loss, Contractor shall exclude from the amounts payable to Subcontractor under Paragraph 5 of this Article, the fair value, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Contractor or to a buyer.
7. The cost principles and procedures of FAR Part 31, in effect on the date of the solicitation, shall govern all costs claimed, agreed to, or determined under this Article.
8. Subcontractor may dispute, pursuant to the "Disputes" Article, any determination made by Contractor under Paragraphs 3, 5, or 10 of this Article, except that if Subcontractor failed to submit the termination settlement proposal within the time provided in Paragraph 3 or 10 and failed to request a time extension, the right to dispute is forfeited. If Contractor has made a determination of the amount due under Paragraphs 3, 5, or 10 of this Article, Contractor shall pay Subcontractor:
  - a. The amount determined; or
  - b. The amount finally determined via dispute resolution.
9. In arriving at the amount due Subcontractor under this Article, there shall be deducted:
  - a. All unliquidated advance or other payments to Subcontractor under the terminated portion of the Subcontract;
  - b. Any claim which Contractor has against Subcontractor under the Subcontract; and

- c. The agreed price for, or the proceeds of sale of, materials, supplies, acquired by Subcontractor or sold under the provision of this Article and not recovered by or credited to Contractor.
- 10. If the termination is partial, Subcontractor may file a proposal with the SA for an equitable adjustment of the price(s) of the continued portion of the Subcontract. The SA shall make any equitable adjustment agreed upon. Any proposal by Subcontractor for an equitable adjustment under this Article shall be requested within 45 calendar days from the effective date of termination unless extended in writing by the SA.
- 11. Contractor may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Subcontractor for the terminated portion of the contract, if the SA believes the total of these payments will not exceed the amount to which Subcontractor will be determined to be entitled.
  - a. If the total payments exceed the amount finally determined to be due, Subcontractor shall repay the excess to Contractor, upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 calendar days after the date of the retention or disposition, or a later date determined by the SA because of the circumstances.
- 12. Unless otherwise provided in the Subcontract, or by statute, Subcontractor shall maintain all records and documents relating to the terminated portion of the Subcontract for 3 years after final settlement. This includes all books and other evidence bearing on Subcontractor's costs and expenses under the Subcontract. Subcontractor shall make these records and documents available to Contractor, at Subcontractor's office, at all reasonable times, without any direct charge. If approved by the SA, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## 35. DISPUTES

- 1. The parties agree that the appropriate forum for resolution of any dispute or claim pertaining to the Subcontract shall be a court of competent jurisdiction as follows:
  - a. Subject to Paragraph 1.b. of this Article, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court for the District of Idaho in Pocatello, Idaho.
  - b. Provided, however, that in the event that the requirements for jurisdiction in the Federal District Court for the District of Idaho in Pocatello, Idaho are not present, such litigation shall be brought in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, with venue in the District Court of the Seventh Judicial District for the District of Idaho in Idaho Falls, Idaho.
- 2. Any substantive issue of law in such dispute, claim or litigation shall be determined in accordance with the body of law applicable to procurement of goods and services by the Federal Government. Nothing in this Article shall grant to Subcontractor by implication any statutory rights or remedies not expressly set forth in the Subcontract.
- 3. The parties agree that alternate dispute resolution (ADR) is an option for resolving disputes pertaining to this Subcontract and, upon the mutual agreement of the parties, ADR will be utilized. The particular ADR process to be used must also be mutually agreed upon and set forth in a written agreement signed by both parties.

Possible ADR procedures include, but are not limited to:

- a. a neutral party to preside over the resolution process;
  - b. mediation;
  - c. binding arbitration.
4. Any ADR process agreed to by the Parties shall take place in Idaho Falls, Idaho.
5. There shall be no interruption to the prosecution of the work and Subcontractor shall proceed diligently with the performance of the Subcontract pending final resolution on any dispute, claim, or litigation arising under or related to the Subcontract between the parties hereto or between Subcontractor and its lower-tier subcontractors.
6. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to the Subcontract; provided, however, nothing in this Article shall prohibit Contractor, at its sole discretion, from sponsoring a claim of Subcontractor for resolution under the provisions of its prime contract with DOE. In the event that Contractor sponsors a claim at the request of Subcontractor, Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as Contractor.

### 36. ASSIGNMENT

1. Neither this Subcontract nor any interest herein nor claim hereunder shall be assigned or transferred by Subcontractor, except as expressly authorized in writing by Contractor. This Subcontract may be assigned by Contractor to the U.S. DOE or to DOE's designee(s).
2. Subcontractor may assign, with Contractor's approval, claims for moneys due or to become due hereunder to a bank, trust company, or other financial institution, including any Federal lending agency. Any such assignment may cover all amounts payable under this Subcontract and not already paid and shall not be made to more than one party, except that any such assignment may be made to one party, as agent or trustee to two or more parties participating in Subcontractor's financing. Payments to an assignee of any moneys due, or to become due hereunder, shall be subject to set off or recoupment for any present or future claim or claims which Contractor may have against Subcontractor arising under this or other subcontracts. Subcontractor shall supply Contractor immediately with two copies of any such assignment and shall indicate on each invoice to whom payment is to be made.

### 37. BANKRUPTCY

In the event Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Subcontractor agrees to furnish, by certified mail, written notification of bankruptcy to the SA responsible for administering the Subcontract. This notification shall be furnished within 5 calendar days of initiation of proceedings relating to bankruptcy filing. This notification shall include the date on which bankruptcy petition was filed, identity of the court in which bankruptcy petition was filed and a listing of Government contract numbers and contract offices for all Government contracts against which final payment by Government has not been made. This obligation remains in effect until final payment under the Subcontract.

### 38. CHANGES

1. Contractor may at any time, and without notice to the sureties, make changes within the general scope of this Subcontract, in any one or more of the following:
  - a. In the specifications (including drawings and designs);
  - b. In the method or manner of performance of the work;
  - c. In Contractor-furnished facilities, equipment, materials, services, or site; and/or

- d. Directing acceleration in the performance of the work.
- 2. Any written or oral change (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from the POC that is within the general scope of the Subcontract, shall be treated as a change order under this Article; provided, that Subcontractor gives the SA and POC written notice stating:
  - a. The date, circumstances and source of the change; and
  - b. That Subcontractor regards the change as a change order.
- 3. Except as provided in this Article, no order, statement, or conduct of the POC shall be treated as a change under this Article, or entitle Subcontractor to an equitable adjustment.
- 4. If any change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Subcontract, whether changed or not changed by any such order, an upward or downward equitable adjustment shall be made in Subcontract cost or delivery schedule or both, and Subcontract shall be modified in writing accordingly. However, except for an adjustment based on defective specifications, no adjustment for any change under this Article shall be made for any costs incurred more than 20 calendar days before Subcontractor gives written notice as required. In the case of defective specifications for which Contractor is responsible, the equitable adjustment shall include any increased cost reasonably incurred by Subcontractor in attempting to comply with the defective specifications. Failure to agree to any adjustments shall be a dispute within the meaning of the Article of this Subcontract entitled "Disputes." Nothing in this Article shall excuse Subcontractor from proceeding with the Subcontract as changed.
- 5. Whenever practicable, negotiation of changes prior to work commencement shall be exercised. Otherwise, Subcontractor shall assert its entitlement to an adjustment under this Article within 30 calendar days after either of the following:
  - a. Receipt of a written change order under Paragraph 1 of this Article; or
  - b. Furnishing a written notice under Paragraph 2 of this Article, by submitting, to the POC, a written statement describing the general nature and amount of the proposal. The written statement may be included in the notice under Paragraph 2.
- 6. Contractor form entitled "Interface Document" shall be used to document deviations, waivers, Subcontractor Field Problems (SFP's), product substitutions (equals) and design changes. When used for construction, the Interface Document's acronym shall be CID. Contractor and Subcontractor agree that after an SFP is originated, and then documented as a CID or change by Contractor, or a CID is otherwise initiated, a meeting to establish the scope of the CID will be held. At the conclusion of the next scheduled Construction Status Meeting, a meeting will be convened specifically to negotiate price and performance impacts due to the CID. Both parties agree they will come to these meetings prepared to resolve the issues and negotiate. If either party is not prepared to support discussions and/or negotiations necessary to facilitate CID resolution and settlement, the parties agree that, the party which is not prepared, shall reimburse the other party at \$250.00 per meeting.
- 7. The pricing of work deleted shall be a downward adjustment in price, equal to the cost Subcontractor would have incurred had the work been performed, plus profit and bond.
- 8. No proposal by Subcontractor for an equitable adjustment shall be allowed if asserted after final payment under the Subcontract.

### 39. PRICE PROPOSAL FORMAT FOR CHANGES

- 1. Subcontractor's proposal must provide sufficient detail and supporting documentation such that it can be used as a basis for negotiations to reach an equitable settlement for the total amount of the proposed or directed change. The proposal shall include the following elements, as appropriate, considering the scope of the change:

- a. Cost breakdown by division of work (Construction Specification Institute [CSI] format - 1 through 16). Cost breakdown by labor, material, equipment and lower-tier subcontractor.
  - (i) Labor (including description, labor rates, quantities, production rates and work hours and any necessary labor markups).
  - (ii) Material (including description, quantities and unit rates for both permanent and expendable materials).
  - (iii) Equipment (including description, quantity, unit rates and duration for owned or rented equipment).
  - (iv) **Lower-tier subcontractor's proposal(s) shall include a breakdown by labor, material and equipment with sufficient detail to support the breakdown. Proposal must clearly indicate scope of the lower-tier's work. Subcontractor shall ensure the accuracy of lower-tier subcontractor's proposal(s) prior to submission to Contractor.**
- b. Summarize all amounts, including appropriate markups and sum to the total amount of the proposed change. Provide sufficient justification and detail to support any and all the final markups.

2. Schedule Impact Analysis

- a. If the proposed change is considered to impact the schedule, a schedule-impact analysis is required; if not, so indicate.
- b. The impact analysis must clearly explain how and why the proposed change is considered to impact completion of the work. The use of a schedule fragnet to detail the impact of the proposed change on the currently accepted schedule is required. An analysis shall be required to negotiate an equitable time adjustment.
- c. The impact analysis shall conclude with a summary of the time extension requested, the milestones or completion dates impacted and the new proposed milestone/completion dates.

40. PAYMENT UNDER FIXED PRICE CONSTRUCTION SUBCONTRACTS

1. Contractor shall make payments monthly as the work proceeds on the earned value of work completed, which meets the standards of quality established under the Subcontract. Payment shall be made for work in-place, on site and in accordance with the accepted revenue-loaded schedule and approved schedule of values. Payment for materials delivered to the site and not included in work in-place shall be allowed for special circumstances. Subcontractor shall submit concurrent with the monthly progress invoice, a justification for Contractor approval to support such request(s) including applicable material invoices. Payment for material off site shall be unallowable, unless set forth otherwise in the Subcontract.
2. Payment terms shall be net 30, unless specified otherwise in the Subcontract. Credit and discount periods shall be computed in calendar days, from the date a properly executed invoice is payable, to the date Subcontractor's check is mailed. The discount will be taken on the full amount due under the invoice.
3. If Subcontractor, after submitting a progress invoice, discovers that a portion or all of such request constitutes a payment for performance by Subcontractor that fails to conform to the specifications, terms and conditions of the Subcontract (hereinafter referred to as the "unearned amount"), Subcontractor shall:
  - a. Notify the SA of such performance deficiency; and
  - b. Shall pay Contractor an amount equal to interest (computed by the SA in the manner provided in 31 U.S.C 3903(c)(1)) on the unearned amount, from the date of receipt of the unearned amount until:

- (i) The date Subcontractor notifies the SA that the performance deficiency has been corrected; or
  - (iii) The date Subcontractor reduces the amount of any subsequent progress invoice by an amount equal to the unearned amount.
- 4. If Contractor finds that satisfactory progress was achieved during any period for which a payment is to be made, the SA shall authorize payment to be made in full minus applicable discounts. However, if satisfactory progress has not been made, Contractor may retain payment in full or in part until satisfactory progress is achieved. Subcontractor's performance shall be measured for compliance with the following key Subcontract elements: (See Supplier Performance Evaluation System.)
  - a. Safety;
  - b. Technical Performance;
  - c. Quality Assurance/Inspection;
  - d. Completion; and
  - e. Administration

Retention shall be effected for deficient performance with any of the key elements.

When the work is substantially complete, the SA may retain from previously withheld funds and future payments that amount the SA considers adequate for protection of Contractor and shall release to Subcontractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the Subcontract, for which the price is stated separately in the Subcontract, payment shall be made for the completed work without retention.
- 5. All material and work covered by progress invoices shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
  - a. Relieving Subcontractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
  - b. Waiving the right of Contractor to require the fulfillment of all of the terms of the Subcontract.
- 6. Title to all material and work specified in the Subcontract shall be furnished free and clear of all liens, claims and encumbrances. Subcontractor agrees to hold Contractor and the Government harmless from all liens, claims or demands in connection with all materials and work furnished under the Subcontract.
- 7. In making payments, Contractor shall, upon request, reimburse Subcontractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after Subcontractor has furnished evidence of full payment to the surety. The retention provisions of this Article shall not apply to that portion of payments attributable to bond premiums.
- 8. Contractor shall pay the final amount due Subcontractor under the Subcontract after:
  - a. Completion and acceptance of all work and deliverables as defined in the Subcontract (e.g., vendor data, training records, redlines);
  - b. Verification that all security badges have been returned to Contractor or transferred to another project.

- c. Presentation of a properly executed voucher; and
- d. Execution of a release of all claims arising by virtue of the Subcontract, other than claims, in stated amounts, that Subcontractor has specifically excepted from the operation of the release. A release may also be required of the assignee if Subcontractor's claim to amounts payable under the Subcontract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).  
Notwithstanding any provision of the Subcontract, payments shall not exceed 80 percent of the maximum price, for work accomplished on undefinitized Subcontract actions. A "subcontract action" is any action resulting in a subcontract, as defined in FAR Subpart 2.1, including Subcontract modifications for additional supplies or services, but not including Subcontract modifications that are within the scope and under the terms of the Subcontract, such as Subcontract modifications issued pursuant to the "Changes" Article, or funding and other administrative changes.

9. Progress Invoice Form

- a. Requests for payment for completed "work in-place" shall be submitted to the POC on form entitled "Progress Invoice for Construction Subcontracts." The detail required on this invoice form shall be the same as that in the approved "Schedule of Values", together with appropriate percentages and amounts for the "prior" and "current" periods as required by the form.
- b. Prior to submitting the invoice for payment to the SA, Subcontractor's superintendent shall schedule and participate in a walk-through of the work area with the POC, in order to reach agreement upon the percent complete for each of the line items on the progress invoice form. The percentages agreed to during the walk-through shall be the basis for the amounts invoiced on the progress invoice.

41. EXCESS COSTS INCURRED BY CONTRACTOR

Subcontractor shall reimburse Contractor for all costs incurred by Contractor and/or DOE due to Subcontractor's failure to comply with Subcontract requirements, including but not limited to:

- 1. Environmental, safety, health, or quality assurance violations;
- 2. Rework necessary to meet Subcontract requirements;
- 3. Support of Subcontractor's recovery schedule;
- 4. Inspections by Contractor not performed, as scheduled, due to incomplete or inadequate status of the work for which Subcontractor is at fault;
- 5. Inspections that must be repeated by Contractor due to errors, omissions, mismanagement or any fault of Subcontractor;
- 6. Vendor data review and processing as a result of resubmittals in excess of 3, which are attributable to inadequate Subcontractor coordination or preparation.
- 7. Subcontractor's submittal of a SFP which can be shown to be clearly defined in the Subcontract documents. The rate of reimbursement shall be \$200.00 for each occurrence.
- 8. Subcontractor's failure to restore all Government-owned property, facilities, utilities, or systems, including replacement of survey stakes, to "like-for-like" condition after use or damage by Subcontractor.
- 9. Subcontractor's failure to adequately repair and/or replace property of a third party damaged by Subcontractor.

10. Subcontractor's failure to maintain the cleanliness and orderly arrangement of the work site during construction and at final acceptance, within reason, to the satisfaction of Contractor.

#### 42. DIFFERING SITE CONDITIONS

1. Subcontractor shall promptly (within 1 work day) and before the conditions are disturbed, give a written notice to the POC of:
  - a. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Subcontract; or
  - b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Subcontract.
2. Contractor shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and cause an increase or decrease in Subcontractor's cost of, or the time required for, performing any part of the work under the Subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Subcontract modified in writing accordingly.
3. No request by Subcontractor for an equitable adjustment to the Subcontract under this Article shall be allowed, unless Subcontractor has given the timely written notice required; except that the time prescribed for giving written notice may be extended by the SA.
4. No request by Subcontractor for an equitable adjustment to the Subcontract for differing site conditions shall be allowed if such request is made after final payment is requested under the Subcontract.

#### 43. VARIATION IN ESTIMATED QUANTITIES

If the quantity of a unit-priced item in the Subcontract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the Subcontract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity.

If the quantity variation is such as to cause an increase in the time necessary for completion, Subcontractor may request, in writing, an extension of time, to be received by the SA within 10 calendar days from the beginning of the delay, or within such further period as may be granted by the SA before the date of final settlement of the Subcontract. Upon the receipt of a written request for an extension, the SA shall ascertain the facts and make an adjustment for extending the completion date which, in the judgment of the SA, is justified.

#### 44. ROCK EXCAVATION

1. The definition of rock, under this paragraph, shall be considered to mean mineral matter occurring in ledges or masses of such size and density that it can only be reasonably removed by the use of explosives or appropriate power tools.
2. In the event that rock is encountered in the work, which is not indicated in the specifications or on the drawings, and for which Subcontractor proposes compensation, it shall be brought immediately to the attention of Contractor (PRIOR TO EXCAVATION) and should excavation of the rock be required, an equitable adjustment in the Subcontract Price and/or Performance Period shall be made under the "Differing Site Conditions" Article.

#### 45. QUANTITY SURVEYS

1. Quantity surveys shall be conducted and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in-place.
2. Contractor shall conduct the original and final surveys and make the computations based on them. Subcontractor shall conduct the surveys for any periods for which payments are requested and shall make the computations based on these surveys. All surveys conducted by Subcontractor shall be witnessed and verified by Contractor.
3. Promptly upon completing a survey, Subcontractor shall furnish to Contractor the original of all field notes and other records relating to the survey or layout of the work, which shall be used to determine the amount of payment. Subcontractor shall retain copies of all such material furnished to Contractor.

#### 46. CONTRACTOR-FURNISHED GOVERNMENT-OWNED MATERIAL

(The following Article shall apply only if there is a list of Government-owned material to be used for the work being performed under the Subcontract.)

1. Contractor shall deliver to Subcontractor, for use in connection with and under the terms of the Subcontract, the Government material described in Schedule "X" of the Subcontract, together with such related data and information Subcontractor may request and as may be reasonably required for the intended use of the material.

Subcontractor shall prepare and submit to Contractor by written notice a "Request for Government-Owned Material and/or Equipment."

2. The delivery or performance dates for the Subcontract are based upon the expectation that material, suitable for use, shall be delivered to Subcontractor at the times stated in the Subcontract or, if not stated, in sufficient time to enable Subcontractor to meet Subcontractor's performance dates.
3. The quantity shown for items listed in Schedule "X" is the only amount of the item that shall be made available free of charge. The indicated quantity is not to be regarded as a representation of the total or absolute amount of the material which shall be required to complete the project according to the specifications and drawings.
4. Contractor-furnished items shall be available only during normal work hours and a 1 work day minimum advance notice (Fridays, Saturdays, Sundays and holidays excluded) to Contractor shall be required. Subcontractor shall be responsible for all unloading, loading, transporting, storage and handling necessary from point of delivery as indicated in Schedule "X". Subcontractor shall arrange to unload transit vehicles prior to the assessment of demurrage and shall be financially responsible for all demurrage charges which occur as a result of Subcontractor's inaction, fault, or negligence.
5. If Contractor-furnished material is received by Subcontractor in a condition not suitable for the intended use, Subcontractor shall, upon receipt of it, notify the POC detailing the facts and as directed by the POC at Contractor expense, either repair, return, or otherwise dispose of the material. After completing the directed action and upon written request of Subcontractor, an equitable adjustment in the Subcontract shall be made.
6. If Contractor-furnished material is not delivered to Subcontractor by the required time, the SA shall, upon Subcontractor's timely written request, make a determination of the delay, if any, caused Subcontractor and shall make an equitable adjustment in the Subcontract.
7. Changes in Contractor-Furnished Material

a. Contractor may, by written notice:

- (i) Decrease the Government-owned material provided or to be provided under the Subcontract; or

- (ii) Substitute other Government-owned material for the material to be provided by Contractor.
- b. Subcontractor shall promptly take such action as Contractor may direct regarding the removal, shipment, or disposal of the material covered by such notice.
- c. Upon Subcontractor's written request, Contractor shall make an equitable adjustment to the Subcontract, if Contractor has agreed in the schedule to make the material available for performing the Subcontract and there is any:
  - (i) Decrease in, or substitution for, the property; or
  - (ii) Withdrawal of authority to use the property.

8. Title to Government Material

- a. The Government shall retain title to all Contractor-furnished material.
- b. All Contractor-furnished material and all material acquired by Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government material"), are subject to the provisions of this Article. Title to Government material shall not be affected by its incorporation into or attachment to any material not owned by the Government, nor shall Government material become a fixture or lose its identity as personal property by being attached to any real property.
- c. Title to each item of facilities and special test equipment, acquired by Subcontractor for Contractor under the Subcontract, shall pass to and vest in the Government when Contractor has paid for it.

9. The Government material shall be used only for performing the Subcontract, unless otherwise provided in the Subcontract or approved by Contractor.

10. Material Administration

- a. Subcontractor shall be responsible and accountable for all Government material under the Subcontract while it is in Subcontractor's possession.
- b. Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection and preservation of Government material in accordance with 41 CFR Chapters 101 and 109 and sound industrial practice.
- c. If damage occurs to Government material prior to transfer to Subcontractor or after acceptance by Contractor, the risk of which has been assumed by Contractor under the Subcontract, Contractor shall replace the items or Subcontractor shall make such repairs as Contractor directs. However, if Subcontractor cannot effect such repairs within the time required, Subcontractor shall dispose of the material as directed by Contractor. When any material for which Contractor is responsible is replaced or repaired by Subcontractor, Contractor shall make an equitable adjustment in the Subcontract.
- d. Subcontractor represents that the Subcontract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of material for which Subcontractor is responsible shall be accomplished by Subcontractor at its own expense.

11. Contractor and its designees shall have access at all reasonable times to the premises in which any Government material is located, for the purpose of inspecting the Government material, through coordination by the POC.

12. Unless otherwise provided in the Subcontract, Subcontractor assumes the risk of and shall be responsible for,

any loss or destruction of, or damage to, Government material upon its delivery to Subcontractor or upon passage of title to the Government. However, Subcontractor is not responsible for reasonable wear and tear to Government material or for Government material properly consumed in performing the Subcontract.

13. Equitable Adjustment

When this Article specifies an equitable adjustment, it shall be made to any affected Subcontract provision in accordance with the procedures of the "Changes" Article. When appropriate, the SA may initiate an equitable adjustment in favor of Contractor. The right to an equitable adjustment shall be Subcontractor's exclusive remedy. Contractor shall not be subject to litigation for breach of contract for:

- a. Any delay in delivery of Contractor-furnished material; or
- b. Delivery of Government material in a condition not suitable for its intended use;
- c. A decrease in, or substitution of, Contractor-furnished material;
- d. Failure to repair or replace Government material for which Contractor is responsible.

14. Upon completing the Subcontract, or at such earlier dates as may be fixed by Contractor, Subcontractor shall submit, in a form acceptable to Contractor, inventory schedules covering all items of Government material (including any resulting scrap) not consumed in performing the Subcontract or delivered to Contractor. Subcontractor shall deliver, f.o.b. origin, the Government material as may be directed or authorized by Contractor.

15. Abandonment and Restoration of Subcontractor Premises

Unless otherwise provided herein, Contractor:

- a. May abandon any Government material in-place, at which time all obligations of Contractor regarding such abandoned material shall cease; and
- b. Has no obligation to restore or rehabilitate Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or Subcontract completion). However, if the material (listed in Schedule "X") is withdrawn or is unsuitable for the intended use, or if other material is substituted, then the equitable adjustment may properly include restoration or rehabilitation cost.

16. All communications under this Article shall be in writing.

47. **USE BY SUBCONTRACTOR OF CONTRACTOR-OPERATED GOVERNMENT-OWNED FACILITIES, UTILITIES AND EQUIPMENT**

1. If not identified elsewhere in the Subcontract, Subcontractor shall submit to Contractor POC a written request for usage of Contractor-operated government-owned facilities, utilities and equipment, which shall include a description of the proposed usage and any pertinent information or explanation, such as the type of operation, maximum loading and anticipated period of use.

- a. Operations of equipment shall be in accordance with the manufacturer's instructions and all pre-operational checks, adjustments and maintenance requirements shall have been completed prior to operation.
- b. All operational features such as overload protection, automatic control, safety devices and all other permanent features shall be installed and operable.

- c. After using any Government-owned items or facilities, Subcontractor shall restore them to the original condition (like-for-like) the items or facilities were in when Subcontractor received them, including painting, cleaning and lubrication.
  - d. Acceptance of the return of a Government-owned item or facility by Contractor is subject to Subcontractor's observance and compliance with the foregoing.
2. Cold Weather Activities/Maintaining Conditions: Temporary heat and cold weather protection (e.g., enclosures) shall be provided by Subcontractor as necessary to establish minimum conditions for freeze protection. Failure to maintain minimum conditions shall be cause for correction or replacement by Subcontractor of Government-owned facilities, utilities and equipment.
3. Property, Facilities and Services Provided to Subcontractor

Contractor shall make available to Subcontractor the property, facilities and services described below for its use in performance of the work. Any work or action indicated to be accomplished by Subcontractor shall be at its own expense unless otherwise indicated. Where specific costs are to be charged, to Subcontractor, they shall be billed accordingly.

- a. Contractor shall provide bench calibration services for each new permanently installed Subcontractor-supplied instrument, at no cost to Subcontractor, as required. Calibration shall be in accordance with the specifications and coordinated through Contractor.
- b. INEEL Telecommunications System, if available for Subcontractor's use, shall be identified in the Special Conditions. Setup and use of the telephone lines shall be at Subcontractor's own expense. Long distance calls made by Subcontractor must be billed to a credit card or to Subcontractor's business number. Fax facilities or other types of communication equipment shall not be available for Subcontractor's use at the INEEL unless stated herein.
- c. Electrical Power for Construction
  - (i) Electrical power for construction purposes shall be available for use by Subcontractor as designated in the Special Conditions.
  - (ii) Subcontractor shall be responsible for all work necessary to extend the electrical power from its available source to the construction area. At the conclusion of the project or when such temporary arrangements are no longer required, temporary equipment and systems shall be removed and the area returned to its original condition.
  - (iii) The electrical power furnished by Contractor shall be used cost-effectively by Subcontractor, i.e., all reasonable measures shall be taken to avoid waste. Contractor-furnished electrical power shall not be used to power electric heaters. Built-in electric heating units in construction trailers may be used.
  - (iv) All electrical distribution equipment and panels must be permanently marked to identify the disconnecting points.
  - (v) Portable generators shall be registered with the State of Idaho Air Quality Bureau, as outlined in IDAPA 16.01.01013, prior to use. Portable generators are defined as all generators that are not firmly attached to a passenger vehicle, (e.g., skid mounted generators, generators on trailers). Prior to on-site use of portable generators, Subcontractor shall provide the registration/permit number to the POC.
- d. Subcontractor shall provide an adequate number of portable toilets to accommodate the maximum number of Subcontractor personnel working outside of buildings. Location and type of such temporary facilities are subject to prior approval of Contractor.

Construction and maintenance of temporary toilet facilities shall be accomplished to ensure cleanliness and sanitation. All costs incurred in the construction, maintenance and removal of temporary toilets shall be borne by Subcontractor. All temporary toilet facilities provided by Subcontractor shall be removed to the satisfaction of Contractor prior to closeout of the Subcontract.

- e. Subcontractor personnel may purchase meals at cafeteria facilities. These facilities are available to Subcontractor personnel Monday through Thursday, excluding holidays. Subcontractor personnel may also eat their lunches near the construction site in areas designated for this purpose or in their own vehicles. Disposal of all garbage or waste shall be in the proper receptacles.
- f. Pit-run Aggregate
  - (i) Pit-run aggregate is available to Subcontractor, free of charge, in its natural ungraded and unprocessed state from existing gravel pits located at CFA and RWMC. Subcontractor may use this as a source of backfill, embankment material or other pit-run aggregate. All necessary processing, loading and hauling for completion of the work under the Subcontract shall be the responsibility of Subcontractor. After completion of the hauling, the area shall be reshaped to the original pile contour. Aggregate from the designated area may only be used for work being performed under the Subcontract.
  - (ii) Subcontractor shall request from Contractor quantities of materials required from each borrow source in sufficient time to allow Contractor to process the borrow requests.

**48. PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, UTILITIES, IMPROVEMENTS, EXISTING VEGETATION**

- 1. Subcontractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Subcontract. Subcontractor shall only remove trees when specifically authorized to do so and shall avoid damaging vegetation that shall remain in-place. If any limbs or branches of trees are broken during Subcontract performance, or by the careless operation of equipment or by workmen, Subcontractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Contractor.
- 2. Subcontractor shall protect from damage all existing improvements and utilities:
  - a. At or near the work site; and
  - b. On adjacent property of a third party, the location of which is made known to or should be known by Subcontractor.
- 3. Federal law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. Subcontractor shall control the movements of its personnel and its lower-tier subcontractor personnel at the jobsite to ensure that any existing antiquities discovered thereon shall not be disturbed or destroyed by such personnel. It shall be the duty of Subcontractor to report the existence of any antiquities so discovered. Further, all wildlife shall be protected from destruction or injury due to Subcontractor's operations.

If any unusual materials (e.g., obsidian chips or flakes, bones, darkly stained soils, "arrowheads") are encountered, Subcontractor shall stop work immediately and notify Contractor.
- 4. Except as required by or specifically provided for in the drawings, specifications, or other provisions

**of the Subcontract, Subcontractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the construction site without the prior approval of Contractor.**

49. EXCAVATIONS, SURFACE PENETRATIONS AND INTERRUPTION OF EXISTING UTILITY SERVICES

1. Subcontractor shall obtain written approval from Contractor prior to beginning any excavation, surface penetration or interruption of existing utility services work, by completing and submitting an "Outage Request" form as early as possible but not less than 7 work days prior to the scheduled start of excavation work.
2. Subcontractor shall make arrangements with Contractor 7 work days in advance of its need for interruption of existing services and utilities. Requests for outages shall be submitted for Contractor's approval on an "Outage Request" form. All outages shall be arranged through Contractor.

Every consideration shall be made to accommodate Subcontractor's proposed date, but the exact date and time shall be selected by Contractor.

3. Responsibility For Connecting To Existing Utility Services

- a. At all points where the work constructed by Subcontractor connects to existing utilities and services, the actual work of making the necessary connection to the existing service or utility shall be arranged and coordinated through Contractor and performed by Subcontractor at no expense to Contractor.

Services and utilities included within this responsibility include, but are not limited to, roadways, ditches, electrical circuits, sewer lines, water lines and fencing. Subcontractor shall assume all responsibility for coordination, permits and approvals required by the owner of existing utilities and services.

- b. The locations of existing underground services and utilities as indicated on the drawings are approximate. Subcontractor shall be responsible for making the necessary connections in accordance with subparagraph 3.a. of this Article.

Connections to underground services and utilities located within five feet horizontally and two feet vertically of the location shown on the drawing shall be considered to be within the scope of this paragraph. Underground services and utilities located more than five feet horizontally and/or two feet vertically from the location indicated on the drawing shall be considered a "changed condition" and work incident thereto shall be prosecuted in accordance with the provisions of the "Differing Site Conditions" Article.

50. OPERATIONS AND STORAGE AREAS

1. Subcontractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by Contractor.
2. Subcontractor shall furnish, at its own expense, all temporary structures, utilities and services required for its use such as offices, warehouses and shops, unless otherwise specified. The temporary buildings and utilities shall remain the property of Subcontractor and shall be removed and the area restored to original condition by Subcontractor at its own expense upon completion of the work, or upon Contractor's request.
3. Subcontractor shall provide, at its own expense, all temporary heat and/or heating equipment required and shall maintain the temperatures for the various items of work as required by the manufacturer of the materials, unless the temperatures (and curing periods) are specified otherwise in the Subcontract. Temporary heating devices shall be UL or FM listed.
4. Notification to Contractor POC is required if an opening allowing outside air to enter the structure (existing or planned), may present problems. Subcontractor shall provide the necessary weather and freeze protection

and maintain ventilation.

51. HOUSEKEEPING

1. Cleanup of construction work areas shall be required on a daily basis. Dust control and minimized off-site tracking of sediments from construction areas and access to and around the work areas are also required. Waste and debris shall not be allowed to accumulate in such quantities as to create an unsightly appearance, a safety or fire hazard, nor shall it interfere in any way with free access to, or operation of, existing facilities. Where short term interim storage of waste material is required, all such waste shall be placed in neat piles, clear of all structures, and adequately secured to prevent scattering by wind.
2. Construction debris stockpiled for later removal, with or without a surrounding barrier, shall have a sign at the location identifying Subcontractor stockpiling the materials and the applicable project.

52. REUSABLE EQUIPMENT, MATERIAL, SCRAP METAL AND OFF- SITE REMOVAL

1. All reusable material or equipment removed from any existing system structure as shown on the drawings or indicated in the specifications and not required for reuse shall be properly identified and tagged, checked for contamination when applicable and contact made with the POC.

Subcontractor shall be responsible for such material or equipment until it is actually turned over to Contractor and shall repair or replace such material or equipment which is damaged or lost prior to turnover. Subcontractor shall be responsible for all loading, transporting and handling necessary to convey such material or equipment to the designated area. One copy of a receipt obtained from the designated responsible individual receiving the material or equipment from Subcontractor shall be furnished to Contractor.

2. All removed material designated by Contractor as scrap metal, including, but not limited to, structural steel, steel metal, reinforcing bar, piping, fabricated metal parts and metal casting, shall be deposited at the CFA scrap metal storage area located directly east of Building CFA-601. All scrap metal must be inspected by a CFA Radiological Control Technician (RCT) stationed at building CFA-612. Subcontractor shall arrange through the POC for clearance of scrap metal for storage.
3. Any reusable material or equipment removed from any existing system or structure and taken off site for rework or repairs shall require a property release permit. Form 9-ID, ID Property Pass, shall be obtained from the POC and filled out by Subcontractor. If additional space is needed for description of items removed, a separate sheet shall be filled out and signed by both Subcontractor's superintendent and the POC. When leaving the INEEL site through a controlled access point, Subcontractor shall show the property release permit to the Security Guard. Failure to obtain a release permit and show it to the Security Guard shall be cause for interpretation that items being removed are stolen property of the United States Government and criminal charges may be filed.

53. WELDING REQUIREMENTS

1. All welding performed at the INEEL under the Subcontract shall be in accordance with the INEEL Welding Program as described in the INEEL Welding Manual (available upon request). The INEEL Welder Qualification Test Facility is located in INTEC-698 on the east side of INTEC. The personnel certifications shall be provided to Subcontractor at no cost for the testing only. The time required for testing is dependent on the ability of the welder to perform the required tests and costs for the welder's time shall be borne by Subcontractor. The facility is presently open Monday through Thursday, excluding holidays, from 7:00 a.m. to 5:30 p.m. only; testing is limited to six persons at any one time and early scheduling of testing is advised.

Welder qualification services may be provided to Subcontractor at other times when approved by Contractor. Subcontractor shall submit a completed "Request for Welding Qualification", to Contractor a minimum of 1 work day prior to the date of the requested testing. Testing on off-shifts and weekends may be accommodated, but must be approved by Contractor. Under the INEEL Welding Program, welders are

certified for a period of 6 months. If certification expires, the welder must return to the weld lab for retesting. Subcontractor may avoid re-certification and the attendant cost, by requesting inspection of production welding and updating of welder certifications which are about to expire. Certification cards showing the date of each welder's most current certifications shall be issued by Contractor.

2. **All welding performed under the Subcontract at locations other than the INEEL shall be performed in accordance with the standards described in the Subcontract documents. Copies of welding procedures, welding personnel qualification records and any other documentation required by the welding standards shall be provided to Contractor upon request or shall be submitted as specified on the Schedule. These requirements extend to all lower-tier subcontractors and suppliers utilized by Subcontractor in the performance of the Subcontract.**

#### 54. USE AND POSSESSION PRIOR TO COMPLETION

1. Contractor shall have the right to take possession of, or use, any completed or partially completed part of the work. Before taking possession of, or using, any work, Contractor shall furnish Subcontractor a list of items of work remaining to be performed or corrected on those portions of the work that Contractor intends to possess or use. However, failure of Contractor to list any item of work not performed shall not relieve Subcontractor of responsibility for completing said work per the terms of the Subcontract. A "Partial Inspection and Project Transfer" document shall initiate occupancy or use of the portion of the work described therein and must be signed by authorized representatives of Subcontractor and Contractor.
2. While Contractor has such possession or use, Subcontractor shall be relieved of the responsibility for the loss of or damage to the work resulting from Contractor's possession or use. If prior possession or use by Contractor delays the progress of the work or causes additional expense to Subcontractor, an equitable adjustment shall be made in the Subcontract price and/or the time of completion and the Subcontract shall be modified in writing accordingly.

#### 55. ACCEPTANCE

Final acceptance shall be documented by execution of a "Final Inspection and Project Transfer" document.

#### 56. WARRANTY OF CONSTRUCTION

1. In addition to any other warranties in the Subcontract, Subcontractor warrants that work performed under the Subcontract conforms to the Subcontract requirements and is free of any defect in equipment, material, Subcontractor-furnished design, or workmanship performed by Subcontractor or any lower-tier subcontractor.
2. This warranty shall continue for a period of one year from the date of partial or final acceptance of the work, whichever occurs first, as documented by a fully executed Inspection and Project Transfer form. If Contractor takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date Contractor takes possession.
3. For items repaired under warranty, the warranty shall extend for one year after the date of repair or replacement. Subcontractor shall restore, and the warranty shall extend for one year after the date restoration is complete, any work damaged in fulfilling the provisions of this Article.
4. The SA shall notify Subcontractor, in writing, within a reasonable time after the discovery, of any failure, defect, or damage. Subcontractor shall initiate corrective action within 2 work days from the date of receipt of notice from Contractor.
5. Items Repaired Under Warranty
  - a. Subcontractor shall remedy at Subcontractor's expense any failure to conform or any defect. In addition, Subcontractor shall remedy at Subcontractor's expense any damage to Government-owned or-controlled real or personal property, when that damage is the result of:

- (i) Subcontractor's failure to conform to Subcontract requirements; or
    - (ii) Any defect in equipment, material, workmanship, or design furnished.
  - b. If Subcontractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Contractor shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Subcontractor's expense.
6. With respect to all warranties, express or implied, from lower-tier subcontractors, manufacturers, or suppliers, for work performed and materials furnished under the Subcontract, Subcontractor shall:
- a. Obtain all warranties that would be given in normal commercial practice;
  - b. Require all warranties to be executed, in writing, for the benefit of Contractor, if directed by the SA; and
  - c. Enforce all warranties for the benefit of Contractor, if directed by the SA.
7. **In the event Subcontractor's warranty to Contractor under this Article has expired, Contractor may bring suit at its expense to enforce a lower-tier subcontractor's, manufacturer's or vendor's warranty that exceeds such expiration.**
8. This warranty shall not limit Contractor's rights with respect to latent defects, gross mistakes or fraud.

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